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*Oberlin College*

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**Parallel Pillars: How International Relations Theory Can Explicate and Rebalance the  
Three Pillars of the Responsibility to Protect**

**Lauren Muscott**

**April 22, 2013**

**2013 Honors Thesis  
Professor Steven Crowley  
Politics Department  
Oberlin College**

**I affirm I have adhered to the Honor Code in this assignment.**

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## 1. Introduction

Since its universal adoption in 2005 and reaffirmation by the Security Council in 2006, the principle of the Responsibility to Protect (R2P) has developed into a prominent feature of global political discourse.<sup>1</sup> Academics and politicians alike have heatedly debated the principle. While some proclaim that R2P could end the perpetration of mass atrocity crimes, others hold that the principle is merely a continuation of long-standing Western imperialist policies. The events in Libya have reinvigorated the R2P debate and could very well determine the future course of this emerging principle. Despite the heated debates and the plethora of academic literature that R2P has inspired, these discussions have largely been detached from any theoretical foundation. Given that international relations theory seeks to explain global politics and foreign policy, it would seem that R2P presents a fruitful opportunity for theoretical exploration. Can the major international relations theories provide insight into the emergence and practice of R2P?

Four years after its adoption, Secretary-General Ban Ki-moon began releasing annual reports on R2P, exploring different facets of the principle that he believed needed clarification or strengthening. In his first report, Ban Ki-moon offered United Nations (UN) member states a new way to conceptualize R2P, transforming the principle from just seven sentences in the World Summit Outcome Document into a three pillar framework meant to guide states in fulfilling their obligations under R2P. Following an interactive dialogue on the report, the General Assembly accepted this vision of R2P. Since then, this three pillar framework has dominated the discourse on R2P. While these three pillars help elucidate the principle as a matter of policy, how do they

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<sup>1</sup> See UN General Assembly, *2005 World Summit Outcome*, 24 October 2005, A/RES/60/1; and UN Security Council, *Resolution 1674 (2006)*, 28 April 2006, S/RES/1674, para. 4.

relate, if at all, to the three ‘pillars’ of international relations theory – realism, liberalism, and constructivism? In exploring the language, goals, and tactics of the three R2P pillars, remarkable parallels become apparent between these pillars and the three major theories of international relations.

The first pillar, which asserts that states bear the primary responsibility to protect their populations from the four crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity, also tacitly asserts a fundamental reconception of state sovereignty. While still fully recognizing the authority of the state within its territory, the first pillar shifts sovereignty from an absolute to a conditional feature of statehood. As Ban Ki-moon asserts, “The State ... remains the bedrock of the responsibility to protect, the purpose of which is to build *responsible* sovereignty, not to undermine it.”<sup>2</sup> Such a conceptual shift is emblematic of the socially constructed nature of international relations advocated by constructivism. Constructivists such as Alexander Wendt claim that “Sovereignty is an institution, and so it exists only in virtue of certain intersubjective understandings and expectations; there is no sovereignty without an other.”<sup>3</sup> As such, constructivist theory allows for the changes in identities and interests which R2P proposes and indeed depends on.

From this conceptual foundation, the second pillar of R2P seeks to establish a communal responsibility shared among all states to assist each other in fulfilling their first pillar responsibilities. Ranging from ‘encouragement’ to material aid, this pillar is meant to support and strengthen states that are struggling to protect their populations from mass atrocity crimes.<sup>4</sup> This

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<sup>2</sup> UN General Assembly, *Implementing the responsibility to protect: Report of the Secretary-General*, 12 January 2009, A/63/677, para. 13 (emphasis added), <http://www.refworld.org/docid/4989924d2.html>.

<sup>3</sup> Alexander Wendt, “Anarchy is what States Make of it: The Social Construction of Power Politics,” *International Organization* 46 no. 2 (1992): 412, <http://www.jstor.org/stable/2706858>.

<sup>4</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 29.

belief that cooperation among states can lead to the mitigation and prevention of human suffering is a major tenet of liberalism, specifically liberal institutionalism. Robert Keohane, one of the most prominent liberal institutionalists, has asserted that a solid consensus has developed around the idea that “global issues require systematic policy coordination and that such coordination requires institutions.”<sup>5</sup> As such, the UN, regional bodies, and R2P itself have a vital role to play in achieving peace. The concept of peace has been a fundamental concern of liberalism. Immanuel Kant’s ‘federation of states’ and its promise of ‘perpetual peace’ can be seen as the conceptual forebear of modern day international institutions.<sup>6</sup> The second pillar’s emphasis on supporting economic development and responsive, as well as responsible, government reflects Kant’s belief that commerce and representative governance are vital to achieving peace.<sup>7</sup>

These ideals of economic and political engagement are suspended in the third pillar, which demands “timely and decisive action” when genocide, ethnic cleansing, war crimes, and crimes against humanity are being perpetrated.<sup>8</sup> The third pillar is wholly concerned with compelling states to act when “national authorities are manifestly failing to protect their populations.”<sup>9</sup> While advocates reiterate again and again that the use of force is reserved as a measure of last resort, the mere possibility of its use has proven contentious. The actions taken in Libya under the auspices of R2P have further animated the fear that R2P is just military intervention in humanitarian clothing. Such controversy seem to strengthen the assertions of

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<sup>5</sup> Robert Keohane, “International Institutions: Can Interdependence Work?”, *Foreign Policy* no. 110 (1998): 84-5, <http://www.jstor.org/stable/1149278>. Verbs have been changed to reflect the proper tense.

<sup>6</sup> Immanuel Kant, “Eternal Peace,” *The Advocate of Peace* 59 no. 5 (1897): 114, <http://www.jstor.org/stable/25751039>.

<sup>7</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 43-4.

<sup>8</sup> *Ibid.*, para. 50. See also World Summit Outcome, para. 139.

<sup>9</sup> *Ibid.*

realists such as John Mearsheimer, who contends that “cooperation takes place in a world that is competitive at its core – one where states have powerful incentives to take advantage of other states.”<sup>10</sup> If this is truly the case, should the NATO intervention in Libya be seen as powerful states abusing or ‘taking advantage of’ R2P to justify the ousting of an historically antagonistic regime?

As this brief exploration of the three pillars shows, each international relations theory has something to contribute to elucidating the potential and realities of R2P. While academics tend to align themselves with one theoretical perspective, the above exploration demonstrates that all three theories are needed to arrive at a fuller understanding of R2P’s emergence and practice. In his essay “One World, Rival Theories”, Jack Snyder contends that constructivism, liberalism, and realism each have a role to play in explaining international relations. As Snyder asserts, “The influence of these intellectual constructs extends far beyond university classrooms and tenure committees. Policymakers and public commentators invoke elements of all these theories when articulating solutions to global security dilemmas.”<sup>11</sup> Just as all three pillars are needed to uphold R2P, so too are all three theories needed to support and balance one’s understanding of international relations.

However, as Ban Ki-moon warns, “If the three supporting pillars were of unequal length, the edifice of the responsibility to protect could become unstable, leaning precariously in one direction or another. Similarly, unless all three pillars are strong the edifice could implode and collapse.”<sup>12</sup> This is true for the three pillars of international relations theory as well. While each

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<sup>10</sup> John Mearsheimer, “The False Promise of International Institutions,” *International Security* 19 no. 3 (1994-5): 13, <http://www.jstor.org/stable/2539078>.

<sup>11</sup> Jack Snyder, “One World, Rival Theories,” *Foreign Policy* no. 145 (2004): 54, <http://www.jstor.org/stable/4152944>.

<sup>12</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 12.



is essential in understanding international relations, an overemphasis on one theoretical perspective leaves both academia and policy impoverished and unbalanced. Presently, the third pillar and its realist implications have received a preponderance of academic and political attention, forcing R2P discourse to revolve around coercive force and its potential abuse. This in turn has led to insufficient attention being paid to the potential for cooperation and redefining interests embodied in the two other pillars and theories. As long as realist assumptions continue to dominate the discourse on R2P, there is little chance that the principle can break out of self-help logic and achieve its full potential. Hence, a rebalancing is needed between these three ‘parallel pillars’ if R2P is to be fully actualized. Some have already begun to chart this course. By conducting a detailed exploration of how realism can strengthen R2P and where realism’s assumptions need reevaluation, Adrian Gallagher provides a path forward in rebalancing the pillars of international relations and R2P.<sup>13</sup>

By exploring each R2P pillar through a particular theoretical lens, this paper seeks to provide a cross-theoretical analysis of R2P, an approach that has been found lacking in the R2P discourse. Only by rising out of entrenched theoretical positions can the academic and policy communities benefit from the insight each theory has to offer. Additionally, this paper argues that a rebalancing needs to take place among the pillars of R2P and the pillars of international relations theory. Effort spent on defending R2P against claims of Western imperialism and self-interest is effort *not* being spent on developing effective preventative measures and meaningful cooperation that could mitigate these adverse tendencies, thus creating a self-fulfilling prophesy. This is not to say that placing more emphasis on the first two pillars of R2P will resolve the

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<sup>13</sup> Adrian M. Gallagher, “Clash of Responsibilities: Engaging with Realist Critiques of the R2P,” *Global Responsibility to Protect* 4 (2012): 334-357, accessed via ingentaconnect.

dilemmas of self-help and anarchy so well articulated by realist scholars. While constructivism may show that these dilemmas are not inherent to the international system, they at present continue to dominate global politics. Rather, this paper advocates a rebalancing, not the eradication, of the third pillar. Timely and decisive response is critical in achieving R2P's objectives. Additionally, as Ban Ki-moon points out, "it may not always be possible to clearly determine whether an activity falls exclusively under one or another of the three pillars...."<sup>14</sup> The same might be said for the three major theories of international relations; their dialogue mutually informs and generates new insight, and hence realism, while needing reevaluation, is still vital to the study of international relations.

Given this inseparability, this paper inherently runs into certain limitations. By organizing the argument as a one-on-one comparison of pillar to theory, this paper necessarily presents a simplification of both a complex principle and international relations theory more generally. Rarely if ever can theory be so neatly categorized without failing to capture the entirety of the theory's scope and argument. However, this does not mean that a necessarily contrived simplification cannot provide valuable insight into complex ideas. Indeed, all theory is necessarily a simplification of complex relations and concepts. The study of politics is dependent on such simplifications to engender as-yet undiscovered truths and new perspectives. What this paper seeks to do, then, is to offer a new way to understand the principle of R2P and its place within the study of international relations.

It is critical that a shared understanding of certain concepts be established from the outset, hence this paper will begin by defining key terms. The next chapter will be devoted to

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<sup>14</sup> UN General Assembly and UN Security Council, *Responsibility to protect: timely and decisive response*, 25 July 2012, A/66/874-S/2012/578, para. 12, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/874](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/874).

Snyder's approach to international relations theory and how his perspective contributes to this paper's discussion of R2P. Next, the paper will begin its exploration of the three R2P and theoretical pillars. A chapter will be devoted to the first R2P pillar and its relation to constructivism. This chapter will examine their parallels through the theoretical writing of Wendt, the advocacy work of Ban Ki-moon, Bellamy, and Gareth Evans, and the critical perspective of Noam Chomsky.<sup>15</sup> Next, the second pillar and the theoretical works of Keohane and Kant will be explored, highlighting the relationship between the second pillar and the liberal concepts of international institutionalism, economic interdependence, and democratic peace. David Chandler and his critique of who bears the burden of R2P will also be examined. The cases of failed R2P action in Darfur and the seeming success of R2P mediation in Kenya highlight and provide insight into the concepts explored above. Finally, the third pillar will be explored in relation to Mearsheimer's realist perspective. While Mearsheimer's analysis of why insecurity hinders cooperation helps to explain the continued dominance of military power in foreign policy, Mary O'Connell demonstrates that an R2P heavily biased toward coercive action fails to achieve its guiding mandate: to protect populations from mass atrocities. This paper will conclude with an exploration of the path ahead and how advocates and academics alike can work to rebalance the pillars of R2P and international relations theory.

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<sup>15</sup> The work of Bellamy and Evans will be recurring features throughout the three pillar sections. As advocates of R2P who approach the principle from very different perspectives, each provides a unique contribution to this paper's discussion of R2P. Additionally, as his 2009 report provided the three pillar framework for R2P, Secretary-General Ban Ki-moon's work will also maintain a constant presence throughout the three pillar sections.

## 2. Defining Key Terms

The Responsibility to Protect – which delineates the individual and collective responsibility of states to protect populations from genocide, ethnic cleansing, war crimes, and crimes against humanity – has a history extending much further than the 2005 World Summit. Its articulation and development have taken place over the course of more than half a century. The Genocide Convention, which entered into force in 1951, was the first international treaty to make “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” a crime under international law, obligating states to intervene when such acts were perpetrated.<sup>16</sup> Since then, the international community has continued to develop legal instruments that have established war crimes, crimes against humanity, and (more ambiguously) ethnic cleansing as prosecutable crimes under international law.<sup>17</sup> While some claim that the presence of these well-established legal instruments make R2P redundant, Christoph Mikulaschek notes that, “The added value of RtoP is not so much the novelty of international action to protect populations from mass atrocities, but rather the concept’s value as an organizing principle that ties different normative strands together and that has broad popular appeal.”<sup>18</sup>

In addition to these legal instruments, academics and political figures through their work and advocacy have also made significant contributions in the development of R2P. Francis Deng, then serving as Representative of the UN Secretary-General on Internally Displaced Persons,

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<sup>16</sup> UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78 no. 1021, Article II.

<sup>17</sup> Please refer to Appendix A for the full definitions of the crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity, as defined in relevant conventions, treaties, charters, and case rulings.

<sup>18</sup> Christoph Mikulaschek, “The United Nations Security Council and the Responsibility to Protect: Policy, Process, and Practice,” (paper presented at the 39<sup>th</sup> International Peace Institute Vienna Seminar on Peacemaking and Peacekeeping, Vienna, Austria, March 01, 2011), 22. Accessed via <http://www.ipacademy.org>.

first explored the concept of ‘sovereignty as responsibility’, the principal tenet of R2P, in his 1996 report “Sovereignty as Responsibility: Conflict Management in Africa”. The humanitarian crises that occurred throughout the 1990s and the inconsistent responses of the international community toward them led Secretary-General Kofi Annan to pose the following question to UN member states in his Millennium Report: “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?”<sup>19</sup> It was this question that animated the International Commission on Intervention and State Sovereignty (ICISS) and led the commission to produce its report, “The Responsibility to Protect”. This document coined the term ‘responsibility to protect’ and laid the foundation for what states would adopt at the World Summit in 2005 as the UN principle of R2P.

While the ICISS report paved the way for R2P’s debate and adoption in 2005, its vision of R2P should not be conflated or equated with the principle as it stands within international law. As Bellamy asserts, “The norm that emerged from 2005 was ... quite different to the concept proposed by ICISS in 2001 and it was precisely these changes that made consensus possible.”<sup>20</sup> This leads Bellamy to conclude that “the practice of RtoP should draw exclusively from that consensus and not from earlier proposals such as that put forth by ICISS and others.”<sup>21</sup> While both Bellamy and Evans are advocates of R2P, it is here where the two fundamentally diverge. Evans, who co-chaired the ICISS and claims credit for the very term ‘responsibility to protect’,

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<sup>19</sup> Kofi A. Annan, *‘We the Peoples’: The Role of the United Nations in the 21<sup>st</sup> Century* (New York: UN Department of Public Information, 2000), 48, <http://www.un.org/millennium/sg/report/full.htm>.

<sup>20</sup> Bellamy, *Global Politics and the Responsibility to Protect: From words to deeds* (New York: Routledge, 2011), 9.

<sup>21</sup> Ibid.

advocates a vision of R2P that is drawn directly from the pages of the ICISS report.<sup>22</sup> While recognizing the value and importance of the ICISS report, this paper concurs with Bellamy's argument that extrapolating R2P beyond what states agreed to in 2005 has little legal foundation and risks corroding the consensus that has been so tenuously built.

Two cases in particular demonstrate the dangers of conflating R2P with the ICISS report: the Russian invasion of Georgia and France's response to Cyclone Nargis, both of which occurred in 2008. In August of that year, Russia launched a unilateral military campaign against Georgia, ostensibly in response to Georgia's actions in the region of South Ossetia. Russia went so far as to take a major Georgian city, Gori, by military force.<sup>23</sup> Russia justified its actions by asserting that the Georgian army was committing, or imminently about to commit, mass atrocity crimes in South Ossetia, which Russia claimed made its actions against Georgia consistent with R2P.<sup>24</sup> Whether Russia's claims were valid or invalid, what was unequivocally true was that there was insufficient consensus on whether the events in South Ossetia warranted such a forceful response. Furthermore, the R2P adopted by UN member states in 2005 specifically prohibits such unsanctioned unilateral action to prevent precisely this situation. While clearly proscribed in the World Summit Outcome definition, the ICISS report could easily be used to support Russia's actions.

The ICISS report asserts that, "Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international

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<sup>22</sup> Evans, *The Responsibility to Protect* (Washington, D.C.: Brookings Institute Press, 2008), 5.

<sup>23</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 55.

<sup>24</sup> *Ibid.*, 55-6.

responsibility to protect.”<sup>25</sup> Given the legally vague criteria for intervention presented by the ICISS, Russia would have little trouble justifying that ‘serious harm’ was occurring in South Ossetia. While such vague criteria for intervention alone provide ample opportunity for the abuse of military intervention, the ICISS report offers further opportunity when it states, “it is unrealistic to expect that concerned states will rule out other means and forms of action” when the Security Council fails to respond, ‘other’ in this case referring to unsanctioned unilateral action.<sup>26</sup> The ICISS report, while intending to compel states to respond to mass atrocities, is so ill-defined as to potentially cause more human suffering through unchecked military intervention than it prevents.

The dangers of such vague terms as ‘serious suffering’ are also apparent in the case of Cyclone Nargis, which hit Burma in May of 2008. This natural disaster caused massive human suffering, leaving 138,000 dead or missing and over one million displaced.<sup>27</sup> When the Burmese state proved incapable of responding to the magnitude of the crisis and refused to allow foreign aid to enter the country, French Foreign Minister Bernard Kouchner sought to use R2P to justify military intervention as a means of forcibly assisting desperate Burmese civilians.<sup>28</sup> Despite his best efforts, the vast majority of states as well as Special Adviser to the Secretary-General on the Responsibility to Protect Edward Luck rejected this extrapolation of R2P to suffering caused by natural disasters.<sup>29</sup> Evans, while acknowledging that the negligence of the Burmese state in the face of such a disaster seems a crime unto itself, agrees that such a crisis is “not normally, on the

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<sup>25</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, ON, Canada: International Development Research Centre, 2001) “Core Principles,” para. 1, subsection B.

<sup>26</sup> *Ibid.*, para. 6.39.

<sup>27</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 56.

<sup>28</sup> *Ibid.*, 57.

<sup>29</sup> *Ibid.*, 58.

face of it, about protecting people from ‘genocide, war crimes, ethnic cleansing, and crimes against humanity’,” here recognizing that R2P is not driven by a general mandate but rather must be limited to the four atrocity crimes.<sup>30</sup>

While both of these cases demonstrate overreach by two permanent members of the Security Council, they also reveal the strength of international consensus on the World Summit Outcome Document’s authority in defining R2P as a principle of international law. As Bellamy asserts, “relatively powerful states invoked RtoP to legitimize the use or threat of military force but other states and analysts found their arguments unpersuasive. As a result, Russia failed to translate its intervention into a legitimate basis for recognizing South Ossetia and France failed to galvanize support for the forcible delivery of aid.”<sup>31</sup> For all of these reasons, this paper will operate off of the definition of R2P as defined at the World Summit, which is as follows:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.
139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means [...] to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. [...] We also intend to commit

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<sup>30</sup> Evans, *The Responsibility to Protect*, 66.

<sup>31</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 69.



ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those which are under stress before crises and conflicts break out.<sup>32</sup>

Ban Ki-moon's three pillar framework, while lacking the binding force of a Security Council resolution, was adopted by the General Assembly in 2009 and hence reflects a general consensus within the international community that the three pillars contribute to the elucidation of R2P. This framework, used to structure the argument of this paper, will therefore be used to supplement, not replace, the World Summit definition.

The divergent debates surround R2P's meaning and scope requires that the term be explicitly defined, which is why it has been explored and defended to such lengths above. However, another term used throughout this paper also requires some clarification, this being the term 'international community'. For the purposes of this paper, 'international community' refers to UN member states and by extension their governments and officials. States, however, are not the only actors in global politics. The 21<sup>st</sup> century has witnessed the growing role of non-state actors in international relations, a role which this author fully acknowledges and believes deserves serious study. This paper's use of the term 'international community', then, should not be seen as a failure to recognize the role of non-state actors in global politics, but rather as a reflection of this paper's scope. While non-state actors are certainly a part of R2P – as advocates, as critics, as defenders of civilians, as perpetrators of mass atrocity crimes – this paper is concerned primarily with how R2P has been agreed to and operationalized *by states*. This focus on states is reflected in the theoretical writings employed by this paper, further justifying the restriction of the term 'international community' to mean UN member states.

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<sup>32</sup> UN General Assembly, *2005 World Summit Outcome*, 24 October 2005, A/RES/60/1, para. 138-9.

Finally, this paper will adopt Mearsheimer's definition of 'international institutions', which are defined as, "a set of rules that stipulate the ways in which states should cooperate and compete with each other. They prescribe acceptable forms of state behavior, and proscribe unacceptable kinds of behavior."<sup>33</sup> These institutions are in turn "usually incorporated into a formal international organization". This definition captures the normative force of R2P both on its own terms and as a principle of the UN.

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<sup>33</sup> Mearsheimer, "The False Promise of International Institutions," 8.

### 3. Embracing a Multi-theoretical Approach

In setting out the definition of R2P that this paper will employ, the previous section detailed particular developments within international relations that led to, tested, and helped solidify the present understanding of R2P. These events did not occur within a vacuum; the political realities and actions from the 1950s through today have influenced and shaped academia, and vice versa. Hence, international relations theory constitutes a vital component of any attempt to effect or change global politics. Theory, in essence, attempts to explain the world around us. How accurately it does so, however, is another matter, one which occupies Snyder in his essay “One World, Rival Theories”.

Snyder begins by posing a question to the reader, one which bears great import for the future study of international relations: “Instead of radical change, academia has adjusted existing theories to meet new realities. Has this approach succeeded? Does international relations theory still have something to tell policymakers?”<sup>34</sup> The emergence of R2P surely counts among the ‘new realities’ which confront states and academics alike. How well does international relations theory capture the assumptions, aspirations, and pitfalls embodied within R2P? It is exactly this question that this paper seeks to answer. But first, international relations theory must be found capable of explaining international relations on a more general level than the principle of R2P. A theory which helps explain R2P, while helpful, will prove to be of little utility if it cannot situate itself within the wider context of international relations. Hence, this section is devoted to exploring whether international relations theory can still account for global politics on a larger scale before moving on to a more detailed exploration of R2P in later chapters.

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<sup>34</sup> Snyder, “One World, Rival Theories,” 53.

Snyder focuses his work on the three major theories of international relations: realism, liberalism, and “an updated form of idealism called ‘constructivism’.”<sup>35</sup> He offers pithy encapsulations of these theories, useful in establishing the major aspects of each theory: “Realism focuses on the shifting distribution of power among states. Liberalism highlights the rising number of democracies and the turbulence of democratic transitions. Idealism [or constructivism] illuminates the changing norms of sovereignty, human rights, and international justice”.<sup>36</sup> After exploring each of these theories in turn, Snyder concludes that “Each theory offers a filter for looking at a complicated picture. As such, they help explain the assumptions behind political rhetoric about foreign policy. Even more important, the theories act as a powerful check on each other. Deployed effectively, they reveal the weaknesses in arguments that can lead to misguided policies.”<sup>37</sup> This paper draws the same conclusion, arguing that each theory is essential in explicating international relations and R2P. In order to understand how these theories can help or hinder good policy, one must examine both their contributions and shortcomings. It is to this examination that this chapter now turns.

This chapter will explore each of these three theories, both in isolation from and in dialogue with each other. The theoretical writings of Mearsheimer, Keohane, Kant, and Wendt will be utilized to test Snyder’s assertions regarding the theories’ relative strengths and weaknesses. After conducting this cross-theoretical exploration, this paper will conclude by recapping the major contributions of each theory and how these in turn may be applied to R2P.

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid., 53-4.

<sup>37</sup> Ibid., 55.

## *Realism*

Arguably the most ‘pragmatic’ of the three international relations theories, realism has held a prominent position in global politics from the Cold War to the present day. Central to realist theory is power – its distribution, acquisition, and exertion in the international system. As Snyder asserts, “At realism’s core is the belief that international affairs is a struggle for power among self-interested states.”<sup>38</sup> For realists, power considerations effect all aspects of global politics, including participation in international institutions. Mearsheimer asserts that “cooperation among states has its limits, mainly because it is constrained by the dominating logic of security competition, which no amount of cooperation can eliminate.”<sup>39</sup> As such, Mearsheimer arrives at the pessimistic conclusion that, “institutions are not an important cause of peace.”<sup>40</sup>

Realism’s dismissal of international institutions as potential sites for meaningful cooperation among states stems largely from its prioritization of pragmatism over idealism. Snyder writes that “realism claimed to be an antidote to the naive belief that international institutions alone can preserve peace,” a belief which realists see as detached from political reality.<sup>41</sup> Despite this skepticism regarding international institutions, realism does not reject their utility outright. States can cooperate through institutions, but this cooperation will necessarily “reflect calculations of self-interest based primarily on the international distribution of power.”<sup>42</sup> Institutions, then, are less the sites of dynamic engagement than another international arena where power politics are played out.

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<sup>38</sup> Ibid.

<sup>39</sup> Mearsheimer, “The False Promise of International Institutions,” 9.

<sup>40</sup> Ibid., 7.

<sup>41</sup> Snyder, “One World, Rival Theories,” 55.

<sup>42</sup> Mearsheimer, “The False Promise of International Institutions,” 13.

This intense pragmatism makes realism an overwhelmingly pessimistic theory. Even Mearsheimer arrives at this conclusion, stating “[Realism] depicts a world of stark and harsh competition, and it holds out little promise of making that world more benign.”<sup>43</sup> Mearsheimer’s assessment is accurate; realism offers little in the way of mending or even mitigating the anarchic system in which states operate. It is exactly for this reason that the other two theories are needed, to balance realism’s fatalistic worldview and subsequent aggressive tendencies. Liberalists criticize realism heavily for this worldview, arguing that “realism has a stunted vision that cannot account for progress in relations between nations.”<sup>44</sup> Additionally, Realism’s argument that its core assumptions – anarchy, military capability, uncertainty, states’ overriding drive for survival and capacity for strategic thinking – incentivize states to behave aggressively does not take into account the socially constructed nature of the interests and identities which produce these incentives.<sup>45</sup> This failure to recognize the socially bound nature of incentives, a recognition which forms the basis of constructivist theory, is partly why realism arrives at such pessimistic conclusions. While not directly discussed in this paper, realism’s state-centricity also fails to account for the growing impact of non-state actors in global politics. For all of these reasons, a realist perspective alone fails to provide a complete picture of contemporary global politics.

While realism may need to be tempered and supplemented by other theories, it still has much to offer to the study and practice of global politics. Realism appreciates that states often measure power *relative* to other states. Hence, policy constructed with only absolute-gains in mind will most likely fail, especially when it involves international cooperation. As Mearsheimer

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<sup>43</sup> Ibid., 48.

<sup>44</sup> Snyder, “One World, Rival Theories,” 56.

<sup>45</sup> Mearsheimer, “The False Promise of International Institutions,” 10.

contends, “I am not suggesting that relative-gains considerations make cooperation impossible; my point is simply that they can pose serious impediment to cooperation and must therefore be taken into account when developing a theory of cooperation among states.”<sup>46</sup> The importance of relative power is nowhere more apparent than in international security. At present, realism is the only theory that can explain the “continued centrality of military strength and the persistence of conflict” despite the world’s increasing economic interdependence, a reality that confronts the liberal idea that commerce leads to peace.<sup>47</sup> Realism also warns that “states will suffer if they overreach,” calling for states to practice prudence when it comes to military action.<sup>48</sup> Such prudence is especially warranted when it comes to humanitarian intervention. While advocating war as a legitimate tool of state policy, Mearsheimer cautions that “wars should not be fought for idealistic purposes,” a proscription particularly pertinent to the topic of this paper.<sup>49</sup> Snyder ultimately arrives at quite an optimistic assessment of realism, arguing that states who adopt a nuanced understanding of the theory “can mitigate the causes of war by finding ways to reduce the danger they pose to each other.”<sup>50</sup> Additionally, Snyder argues that realism is not inherently amoral. Rather, “its advocates emphasize that a ruthless pragmatism about power can actually yield a more peaceful world, if not an ideal one.”<sup>51</sup> Given these insights, realism remains vital to the study of international relations.

### *Liberalism*

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<sup>46</sup> Ibid., 21.

<sup>47</sup> Snyder, “One World, Rival Theories,” 55.

<sup>48</sup> Ibid.

<sup>49</sup> Mearsheimer, “The False Promise of International Institutions,” 48.

<sup>50</sup> Snyder, “One World, Rival Theories,” 55.

<sup>51</sup> Ibid.

Liberalism has held a privileged place within Western political thought. As Snyder points out, “Liberalism has such a powerful presence that the entire U.S. political spectrum, from neoconservatives to human rights advocates, assumes it as largely self-evident.”<sup>52</sup> Indeed, liberal ideas such as encouraging economic interdependence and promoting democratic institutions have become staples of US foreign policy. The dominance of liberalism can in some part be accredited to the more optimistic outlook it offers to its adherents. Mearsheimer begrudgingly acknowledges the appeal of liberalism, saying “there is a powerful demand in the United States for alternative ways of looking at the world, and especially for theories that square with basic American values. Institutional theories nicely meet these requirements, and that is the main source of their appeal to policymakers and scholars.”<sup>53</sup> Liberalism directly counters the pessimism of realists like Mearsheimer, positing that it is possible for states to pull themselves out of anarchy and forge economic and institutional ties which promote peace.<sup>54</sup> This promise of peace through commerce, cooperation, and democracy has led many international relations scholars to explore the validity of these claims.<sup>55</sup>

While Mearsheimer may disagree, this exploration has found that liberalism’s assertions are credible. As Snyder states, “the belief that democracies never fight wars against each other is the closest thing we have to an iron law in social science.”<sup>56</sup> Kant, the first to articulate what has come to be called ‘democratic peace theory’, provides the following account for why democracies are less prone to violent conflict: “Where the consent of the citizens of the state is

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<sup>52</sup> Ibid., 57.

<sup>53</sup> Mearsheimer, “The False Promise of International Institutions,” 49.

<sup>54</sup> Snyder, “One World, Rival Theories,” 56.

<sup>55</sup> Ibid., 57.

<sup>56</sup> Ibid.



required to determine whether there shall be war or not, as must necessarily be the case where the republican constitutions is in force, nothing is more natural than that they should hesitate much before entering on so perilous a game.”<sup>57</sup> To put this in modern parlance, “Because elected leaders are accountable to the people (who bear the burdens of war), liberals expect that democracies will not attack each other and will regard each other’s regimes as legitimate and nonthreatening.”<sup>58</sup> Democracy, then, mitigates the possibility of war by holding states directly accountable to those who most suffer the anguish of war.

While the form of governance is a crucial component of liberalism’s argument for democratic pacificism, so too is commerce’s ability to promote friendly state-to-state relations. In his work Kant describes how commerce brought citizens of different states into contact with each other, allowing them to establish relations and standards of living which further entrenched these citizens’ unwilling to break ties by entering into war. “Through this interchange,” Kant asserts, “men came into a *peaceful relation* to one another, and even those far removed from one another were brought into intelligent association and friendly relationship.”<sup>59</sup>

These two central tenets of liberalism – democratic governance and economic interdependence – form the foundation on which liberal theories of cooperation through international institutions are built. Snyder notes the centrality of these tenets to liberal theories on cooperation, stating, “Liberalism highlights the cooperative potential of mature democracies, especially when working together through effective institutions”.<sup>60</sup> Proponents of liberal

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<sup>57</sup> Kant, “Eternal Peace,” *The Advocate of Peace* 59, no. 5 (1897): 113.

<sup>58</sup> Snyder, “One World, Rival Theories,” 56.

<sup>59</sup> Immanuel Kant, “Eternal Peace,” *The Advocate of Peace* 59 no. 6 (1897): 141, <http://www.jstor.org/stable/25751052>.

<sup>60</sup> Snyder, “One World, Rival Theories,” 55.

institutionalism assert that international institutions have become vital for the maintenance of order in global politics.<sup>61</sup> Keohane, a prominent liberal institutionalist, asserts that institutions foster mutually beneficial cooperation by lowering the costs and risks of cooperation.<sup>62</sup> “To be effective in the twenty-first century,” Keohane asserts, “modern democracy requires international institutions.”<sup>63</sup>

However, as liberal institutionalism continued to develop, it increasingly broke ties with its idealistic roots and began adopting realist assumptions of self-interest and self-help.<sup>64</sup> This shift has invoked the criticism of theorists such as Wendt, who asserts that “By adopting such reasoning, liberals concede to neorealists the causal powers of anarchic structure”.<sup>65</sup> He further contends that “‘Strong’ liberals should be troubled by the dichotomous privileging of structure over process, since transformations of identity and interest through process are transformations of structure.”<sup>66</sup> Another form of transformation – democratization – has also proven contentious for liberalism. As Snyder notes, “Countries transitioning to democracy, with weak political institutions, are more likely than other states to get into international and civil wars.”<sup>67</sup> Hence, the ‘democratic peace’ does not seem to apply to emerging democracies.<sup>68</sup> While liberals acknowledge the volatility of new democracies, this volatility still challenges liberal assumptions about the pacifying effects of democracy. Indeed, even mature democracies are not always pacifistic, demonstrated by the tendency of powerful Western democracies to launch ‘messianic

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<sup>61</sup> Keohane, “International Institutions: Can Interdependence Work?”, 82.

<sup>62</sup> Ibid., 86.

<sup>63</sup> Ibid., 94.

<sup>64</sup> Ibid., 86.

<sup>65</sup> Wendt, “Anarchy is What States Make of It,” 392.

<sup>66</sup> Ibid., 393.

<sup>67</sup> Snyder, “One World, Rival Theories,” 58.

<sup>68</sup> This concept will be further explored in chapter 5.

struggles' for democratization.<sup>69</sup> Snyder asserts that "It was precisely American democracy's tendency to oscillate between self-righteous crusading and jaded isolationism that prompted early Cold War realists' call for a more calculated, prudent foreign policy."<sup>70</sup> As it currently stands, it seems that democracy can only promise peace for some, not all.

Liberalism, specifically liberal institutionalism, also struggles to motivate the compliance of powerful states such as the US in international institutions. Mearsheimer asserts that this is because "The most powerful states in the system create and shape institutions so that they can maintain their share of world power, or even increase it."<sup>71</sup> Hence, when these institutions cease to be to their advantage, powerful states excuse themselves from their institutional obligations. Mearsheimer concludes that "They [liberal institutionalists] apparently concede that their theory only applies when relative-gains considerations matter little or hardly at all."<sup>72</sup> The inability of liberalism to overcome relative power and gains considerations is one of the theory's greatest weaknesses.

Despite these limitations, liberalism and international institutions still play a vital role in describing and coordinating international relations. The 'democratic peace theory' still holds among mature democracies and is one of the few seemingly irrefutable theories in international relations. Economic interdependence has become an increasingly important feature of the international system, an interdependence which is increasingly being coordinated by international institutions. After considering the weaknesses of liberal institutionalism as detailed above, Snyder concludes that "international institutions can nonetheless help coordinate

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<sup>69</sup> Snyder, "One World, Rival Theories," 57-8.

<sup>70</sup> Ibid., 58.

<sup>71</sup> Mearsheimer, "The False Promise of International Institutions," 13.

<sup>72</sup> Ibid., 21-2.

outcomes that are in the long-term mutual interest of both the hegemon and ... weaker states.”<sup>73</sup>

Liberalism, then, is still crucial for understanding contemporary international relations.

### *Constructivism*

While realism and liberalism both seek to explain and modify the behavior of states in an anarchic international system, constructivism seeks to challenge the fundamental assumptions on which both of these theories base their conclusions. Snyder’s assessment of constructivism in relation to these two theories holds that, “Whereas realists dwell on the balance of power and liberals on the power of international trade and democracy, constructivists believe that debates about ideas are the fundamental building blocks of international life.”<sup>74</sup> These ideas, often taken for granted by realist and liberal theory, are constantly being renegotiated and developed both consciously and subconsciously. Given this dynamism, constructivists find the realist argument that identities and interests are fixed and immutable to be absurd.<sup>75</sup> For constructivists like Wendt, states always possess the agency to alter their identities and interests, since “[t]he fact that roles are ‘taken’ means that, in principle, actors always have the capacity for ‘character planning’ – for engaging in critical self-reflection and choices designed to bring about changes in our lives.”<sup>76</sup> Hence, as Wendt puts it, anarchy is what states make of it.

Troubled by liberalism’s dependence on realist assumptions of self-interest and structure to assert its own ideas regarding process, Wendt declares that his objective is to develop “a constructivist argument ... on behalf of the liberal claim that international institutions can

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<sup>73</sup> Snyder, “One World, Rival Theories,” 58-9.

<sup>74</sup> Ibid., 60.

<sup>75</sup> Ibid.

<sup>76</sup> Wendt, “Anarchy is What States Make of It,” 419.

transform state identities and interests.”<sup>77</sup> For Wendt, this dependency on realist assumptions undermines the whole liberal agenda of transforming state behavior through institutions, since “Regimes cannot change identities and interests if the latter are taken as given.”<sup>78</sup> Snyder himself explores how state identities and interests have indeed changed over the course of history, from the Protestant reformation to the emergence of the sovereign state.<sup>79</sup> Since such historical shifts in international relations demonstrate the transmutable nature of identity and interests, constructivism asserts that process can alter the structure of international relations.<sup>80</sup>

Although presenting a strong argument for the importance and changeability of ideas and beliefs, constructivism ultimately does little to directly challenge the realist reality that currently dominates global politics. While Wendt’s argument successfully undermines the key realist assumption that anarchy causally determines state identities and interests, Wendt ultimately ends up paving a constructivist path to the realist present.<sup>81</sup> As Snyder states, “Constructivists are good at describing changes in norms and ideas, but they are weak on the material and institutional circumstances necessary to support the emergence of consensus about *new* values and ideas.”<sup>82</sup> While challenging realism’s fundamental causal assumptions, constructivism still lacks the theoretical capacity to explain how state behavior and identity can be changed here and now.

While constructivism may not be able to point the way to changing current global politics, its exploration of the role that ideas and collective understanding have in identity and

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<sup>77</sup> Ibid., 393-4.

<sup>78</sup> Ibid., 393.

<sup>79</sup> Jack Snyder, “One World, Rival Theories,” 61.

<sup>80</sup> Wendt, “Anarchy is What States Make of It,” 394.

<sup>81</sup> Ibid., 415-6.

<sup>82</sup> Snyder, “One World, Rival Theories,” 61. Emphasis added.

interest formation provides a significant contribution to the study of international relations. As Wendt asserts, “If society ‘forgets’ what a university is, the powers and practices of professor and student cease to exist; if the United States and Soviet Union decide that they are no longer enemies, ‘the cold war is over’. It is collective meanings that constitute the structures which organize our actions.”<sup>83</sup> This insight demonstrates that self-help and power politics are not inherent aspects of international relations, but rather products of an international process of socialization.<sup>84</sup> Constructivist theory therefore offers a vital contribution to the study of international relations.

### *Conclusions*

This section has sought to demonstrate that the three major international relations theories – realism, liberalism, and constructivism – each provide crucial analytical tools for understanding and explaining global politics. While each theory approaches global politics from different assumptions and goals, it is this varied perspective that allows these theories to each provide unique insight. As Snyder asserts, “One of the principle contributions that international relations theory can make is not predicting the future but providing the vocabulary and conceptual framework to ask hard questions of those who think that changing the world is easy.”<sup>85</sup> Indeed, the battle to establish and implement the principle of R2P demonstrates that this isn’t so. With this multi-theoretical approach established and defended, this paper now moves on to explore how these three theories can help elucidate the three pillars of R2P.

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<sup>83</sup> Wendt, “Anarchy is What States Make of It,” 397.

<sup>84</sup> Ibid., 394.

<sup>85</sup> Snyder, “One World, Rival Theories,” 62.

#### **4. Constructing the First Pillar: Constructivist Insights into the Development of the Responsibility to Protect**

At the time of this writing, the ‘responsibility to protect’ is a relatively new principle. Despite the recent nature of R2P, the crimes which animated the development of this principle date back to time immemorial. As charted in chapter 2., the principle as it was adopted in 2005 was the product of decades of advocacy, scholarship, and debate which sought to identify the perpetration of mass atrocities as a crime under international law that compelled international action. This discourse sought to alter fundamental concepts in international relations, from the enforceability of international law to the very definition of state sovereignty. To study R2P, then, is to study the power that ideas can have in changing identities, interests, and norms of behavior. The power of ideas is the principle concern of constructivism, making this theory an apt framework to employ to understand the development, formation, and adoption of R2P.

This chapter will examine the ‘first pillar’ of R2P, defined by Secretary-General Ban Ki-moon as “the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.”<sup>86</sup> To understand how universal consensus was reached around the idea of sovereignty as a responsibility, this chapter will explore the process of negotiation and renegotiation that led up to R2P’s adoption and continues to the present day. Wendt’s exploration of the importance of process in influencing and changing state identities and practices will provide insight into how R2P came to be articulated in its present form. While R2P has certainly changed the language and discourse around sovereignty and the perpetration of mass atrocities, it

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<sup>86</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 11.

is yet unclear whether the principle has changed state identity or interests. Chomsky's exploration of the troubled history of humanitarian efforts demonstrates that it will take more than words and ideas to change entrenched state interests and practices. While such criticism helps balance the sometimes overly idealistic aspirations of R2P's advocates, this criticism should be utilized to improve R2P rather than reject the principle outright. This chapter will conclude that, while R2P continues to be debated and renegotiated, it has begun to change the discourse on mass atrocities, providing a critical first step in engaging the international community in its second and third pillar responsibilities.

### *Developing a Responsibility to Protect*

While R2P attempts to redefine the way that states relate and interact with their populations and the international community, the mass atrocity crimes which led to the principle's articulation predate the emergence of the state as an actor in global politics. As Evans sadly acknowledges, "Massacres of the innocent, forced displacement of populations, large-scale sexual violence and humiliation, and the wanton destruction of civilian property have been going on since the dawn of civilization."<sup>87</sup> Even as states solidified into individual political entities, a Hobbesian logic of 'all against all' continued to dominate in which security could only be guaranteed through might and the capacity to use force.<sup>88</sup> For Wendt, the inception of sovereignty changed the nature of this game. "The principle of sovereignty," Wendt asserts, "transforms this situation by providing a social basis for the individuality and security of

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<sup>87</sup> Evans, *The Responsibility to Protect*, 11.

<sup>88</sup> Wendt, "Anarchy is What States Make of It," 412.



states.”<sup>89</sup> Sovereignty not only created the modern day ‘sovereign state’, but also established a particular relationship between states, one defined by “a mutual recognition of one another’s right to exercise exclusive political authority within territorial limits.”<sup>90</sup> This relationship in turn created boundaries of identity: ‘international’ versus ‘national’, ‘foreign’ versus ‘domestic’.

While these socially constructed boundaries may have helped to mitigate the anarchy of a Hobbesian state of nature, it is exactly these boundaries that Evans holds responsible for the long-standing indifference of states in the face of mass atrocities. “Thus sovereignty ... meant immunity from outside scrutiny or sanction: what happened within a state’s borders and its territorial possessions, however grotesque and morally indefensible, was nobody else’s business. In the history of ideas, there have been few that have prevailed to more destructive effect.”<sup>91</sup> After recounting the numerous massacres that followed the establishment of this concept – from the Boer War to Stalin’s gulags – Evans concludes that the principle of sovereignty has led to the institutionalization of indifference.<sup>92</sup>

The principle of sovereignty, however, was shaken to its core following the horrors of WWII. The millions of lives methodologically processed and destroyed through the German state apparatus led to a crisis of faith regarding the inviolability of state sovereignty. The period following WWII saw the development of numerous institutions meant to check the excesses of sovereignty and to create a collective responsibility to prevent sovereignty’s abuse.<sup>93</sup> Despite the

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Evans, *The Responsibility to Protect*, 16.

<sup>92</sup> Ibid.

<sup>93</sup> the United Nations, the Universal Declaration of Human Rights, the Genocide Convention, the fourth Geneva Convention, and the Convention Against Torture are just a few examples of the organizations, treaties, and declarations developed following WWII.

continued creation of human rights instruments, mass atrocities continued to be perpetrated. The horrors of Rwanda and Srebrenica, which scarred the last decade of the 20<sup>th</sup> century, gave the international community pause. These events caused Kofi Annan to question the principle of non-intervention in the Millennium Report and inspired the creation of the ICISS report. During this period, state actors began a process of self-reflection that would culminate in the universal adoption of R2P at the World Summit in 2005. This process self-analysis is examined by Wendt, who asserts that:

The exceptional, conscious choosing to transform or transcend roles has at least two preconditions. First, there must be a reason to think of oneself in novel terms. This would most likely stem from the presence of new social situations that cannot be managed in terms of preexisting self-conceptions. Second, the expected costs of intentional role change – the sanctions imposed by others with whom one interacted in previous roles – cannot be greater than its rewards. When these conditions are present, actors can engage in self-reflection and practice specifically designed to transform their identities and interests and thus to ‘change the games’ in which they are embedded.<sup>94</sup>

The genocide, war crimes, ethnic cleansing, and crimes against humanity witnessed in WWII, Rwanda, and the Former Yugoslavia provided the catalyst for states to reevaluate state identity and what it meant to be a ‘sovereign’ state in the twenty-first century.

Bellamy’s exploration of the negotiations that took place leading up to the World Summit and the nearly insurmountable obstacles the principle faced along the way demonstrate that this attempt at intentional transformation is far from easy.<sup>95</sup> From late 2004 up until early August of 2005, negotiations on the principle had been making steady process. The idea to have criteria for coercive action was dropped and the primacy of the Security Council as a ‘check’ on Western imperialism was reaffirmed. As the R2P debate was about to close, the United States appointed

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<sup>94</sup> Wendt, “Anarchy is What States Make of It,” 419.

<sup>95</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 21-4. The following outline of the World Summit debate is taken from these pages, unless otherwise noted.

John Bolton as the US Permanent Representative to the UN. Bolton, who is staunchly anti-UN, dedicated himself to the dismantling of the consensus that had been built around R2P and numerous other issues. With less than three days until the World Summit, R2P had been removed from the list of agreed issues. It was only through somewhat ingenious political maneuvering by UN leadership that Bolton's obstruction was overcome, allowing R2P to make it onto the World Summit Outcome Document. This vision of R2P was unanimously adopted by the General Assembly in resolution 60/1 and would be reaffirmed by the Security Council a year later in resolution 1674 (2006).

Through this exploration of the maneuverings, negotiations, and politics required to achieve consensus on R2P, one can see that R2P is the product of complex social processes that were fully dependent on the development of favorable relationships and terms between delegates (and to some extent pure luck). In his 2009 report, Ban Ki-moon acknowledges the ideological battle that had to be waged to achieve the universal adoption of R2P:

The 2005 World Summit was one of the largest gatherings of Heads of State and Government in history. As expected, there were intense and contentious deliberations on a number of issues, including on the responsibility to protect. On some important issues, such as disarmament and the proliferation of weapons of mass destruction, it proved impossible to find consensus language. It is therefore a tribute to both the determination and foresight of the assembled world leaders and to their shared understanding of the urgency of the issue that they were able to agree on such detailed provisions regarding the responsibility to protect. Their determination to move the responsibility to protect from promise to practice reflects both painful historical lessons and the evolution of legal standards and political imperatives.<sup>96</sup>

The ability for debate to create a collective understanding among states that sovereignty as immutable territoriality, which had for centuries defined and shaped the interests and behavior of states, was no longer tenable and had to be altered can only be explained through a constructivist

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<sup>96</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 4.

perspective. As Wendt asserts, “in the realist view anarchy justifies disinterest in the institutional transformation of identities and interests; ... I argue that self-help and power politics do not follow either logically or causally from anarchy and that if today we find ourselves in a self-help world, this is due to process, not structure.”<sup>97</sup> R2P is part of a new international process which challenges this self-help conception of state identity by redefining what it means to be a state. This process of identity reformation is embodied in the first pillar of R2P.

### *Changing State Identities and Interests*

Constructivist theory seeks to demonstrate that no part of the international system is ‘given’; rather, every aspect, including the system’s structure, is the result of intersubjective relationships and socialization.<sup>98</sup> This is especially true when it comes to sovereignty and the state. As Wendt argues, “The sovereign state is an ongoing accomplishment of practice, not a once-and-for-all creation of norms that somehow exist apart from practice.”<sup>99</sup> It is practice, therefore, that defines the state, not the other way around. This leads Wendt to conclude that “If states find themselves in a self-help system, this is because their practices made it that way. Changing the practices will change the intersubjective knowledge that constitutes the system.”<sup>100</sup>

Changing state practice in order to change an international system permissive to the perpetration of mass atrocities is the principle objective of R2P. The first pillar of R2P largely seeks to facilitate this change through a redefinition of the concept of sovereignty. The first pillar clearly states that “The responsibility to protect, first and foremost, is a matter of State

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<sup>97</sup> Wendt, “Anarchy is What States Make of It,” 394.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid., 413.

<sup>100</sup> Ibid., 407.

responsibility, because prevention begins at home and the protection of populations is a *defining attribute* of sovereignty and statehood in the twenty-first century.”<sup>101</sup> In equating R2P with sovereignty, Ban Ki-moon presents R2P as an intrinsic feature of the modern state.

In fact, a defining feature of R2P discourse is its continual assertions that it does not undermine sovereignty, but rather enhances it or simply builds on existing international law. This is evidenced repeatedly throughout the Secretary-General’s delineation of the first pillar. In asserting that “The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect,” the Secretary-General is tying the principle of R2P to sovereignty as well as previously articulated state obligations.<sup>102</sup> Wendt provides insight as to why advocates of R2P may be so determined to link the principle with sovereignty and demonstrate legal precedent: “The process of creating institutions is one of internalizing new understandings of self and other, of acquiring new role identities, not just of creating external constraints on the behavior of exogenously constituted actors.”<sup>103</sup> R2P as an institution can clearly be seen as ‘creating external constraints’ by demanding that states protect their populations from genocide, ethnic cleansing, war crimes, and crimes against humanity. However, as Wendt states, institutions cannot be formed solely through punitive means. States must internalize these institutions if they are to truly alter behavior. As Ban Ki-moon asserts, “The obligations of R2P need to be internalized, transformed from an abstract international principle into domestic law.”<sup>104</sup> Therefore, the linkage of R2P with sovereignty and previous

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<sup>101</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 14. Emphasis added.

<sup>102</sup> Ibid., para. 11.

<sup>103</sup> Wendt, “Anarchy is What States Make of It,” 417.

<sup>104</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 17.

legal precedence can be seen as an attempt to facilitate this internalization by weaving R2P into standing international law and the principle of sovereignty, one of the most internalized institutions in international relations.

By appropriating a concept that has become almost synonymous with statehood, R2P seeks to alter the very foundation on which the modern state was built. Indeed, Wendt argues that sovereignty is the first of three ways in which state identity can be transformed.<sup>105</sup> Understood this way, R2P's efforts to redefine sovereignty is about more than removing a justification for inaction in the face of mass atrocities. By redefining sovereignty from the 'institutionalized indifference' bemoaned by Evans to a 'responsibility to protect', R2P is in essence attempting to transform what it means to be a state.

Indeed, R2P employs each of Wendt's methods of state identity transformation. Wendt's second method, the evolution of cooperation, receives its own pillar in R2P.<sup>106</sup> However, even within the first pillar – which is dedicated to outlining each state's individual responsibilities – states are reminded of the increasingly interdependent and globalized nature of international relations and the need to be open to international assistance.<sup>107</sup> This cooperation is a precondition for Wendt's third method of state identity transformation, which requires intentional effort to transform egoistic identities into collective identities.<sup>108</sup> By calling for open and cooperative relations between states, the Secretary-General and R2P advocates are calling on states to view the international community not as a threat but rather an ally in building responsible sovereignty.

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<sup>105</sup> Alexander Wendt, "Anarchy is What States Make of It," 395.

<sup>106</sup> The second pillar, which stipulates a responsibility to encourage and assist states in fulfilling their responsibilities, will be explored further in the next chapter.

<sup>107</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 14, 22.

<sup>108</sup> Alexander Wendt, "Anarchy is What States Make of It," 395.

In redefining the relationship between states from one of hostility to cooperation, R2P attempts to realize Wendt's vision of 'collective' security, a system in which "states identify positively with one another so that the security of each is perceived as the responsibility of all."<sup>109</sup> This idea of collective security embodies the ultimate objective of R2P: to create a sense of international responsibility for the protection of all populations from the four mass atrocity crimes.

In redefining sovereignty, encouraging cooperation, and expending considerable effort to foster a sense of collective obligation and identity, R2P employs every tool in Wendt's conceptual toolbox to transform state identity and subsequently state behavior. Such rhetorical efforts, however, do not necessarily translate into real-world implementation. Even worse, new discourses can be abused and manipulated to justify the continuance of unacceptable state practices. It is this potential for state abuse of R2P that concerns Chomsky. He sees little distinction between R2P and its 'cousin' humanitarian intervention.<sup>110</sup> In addition to the historical baggage of this relationship, Chomsky asserts that "virtually every use of force in international affairs has been justified in terms of R2P, including the worst monsters."<sup>111</sup> For Chomsky, Hitler and Mussolini's claims of acting on behalf of suffering populations differ little from the modern day principle of R2P.<sup>112</sup> Given the historical use of 'civilian protection' as a means of justifying coercive action, Chomsky questions how 'emerging' of a norm R2P truly is.<sup>113</sup> R2P, then, is nothing more than a continuation of the civilizing mission initiated by Western

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<sup>109</sup> Alexander Wendt, "Anarchy is What States Make of It," 400.

<sup>110</sup> Noam Chomsky, "The skeleton in the closet: The responsibility to protect in history," in *Critical Perspectives on the Responsibility to Protect: Interrogating theory and practice*, ed. Philip Cunliffe (New York: Routledge, 2011), 11.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

states centuries ago, a mission still riddled with inconsistent and largely convenient application.<sup>114</sup>

The charges that Chomsky presents against R2P are grave and deserve serious consideration as the principle continues to develop and be invoked. Bellamy's exploration of cases that have arisen since R2P's adoption demonstrates that the principle is still subject to the whims of powerful states.<sup>115</sup> However, some of Chomsky's fears are based on misconceptions regarding R2P. While never explicitly stated, his use of the Corfu Channel case and his assertions that unilateral action is unacceptable reveal his fear that R2P would be used to justify unilateral action.<sup>116</sup> However, Chomsky seems to assuage his own fear, asserting that R2P as agreed to in 2005 "keeps the skeleton in the closet" and omits "the part that has been contested: the right to use force without Security Council authorization."<sup>117</sup> He even dismisses R2P as "add[ing] nothing substantially new" to international law.<sup>118</sup> These concessions, however, do not stop Chomsky from attempting to use NATO's campaign in Yugoslavia as the realization of unilateral action under R2P. This event, however, occurred before the term R2P had even been coined, making his criticism largely anachronistic.<sup>119</sup> Additionally, the cases of Georgia and Burma explored in Chapter 2 show that states, even Permanent Five states, were unsuccessful in utilizing R2P as adopted in 2005 to justify their actions.

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<sup>114</sup> Ibid., 11, 14-5.

<sup>115</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 58, 64-7. The West's equivocation in Gaza (2008-9) and the failure to even employ the term 'R2P' in relation to the crises in the Sudan (2008-9) and Somalia (2006-ongoing) show that R2P is wholly susceptible to political pitfalls and considerations.

<sup>116</sup> Chomsky, "The skeleton in the closet: The responsibility to protect in history," 12.

<sup>117</sup> Ibid., 12-3.

<sup>118</sup> Ibid., 13.

<sup>119</sup> Ibid., 15.



Since the principle's adoption in 2005, the first pillar's reconceptualization of sovereignty has sought to alter how states understand themselves and their relation with other states. By appropriating this foundational term in international relations, R2P presented itself as an already-internalized concept that simply needed articulation. The first pillar employs all three of Wendt's methods of state identity transformation, but these conceptual tools do not automatically redefine state identity. Cases of mass atrocities since 2005 have shown that R2P has yet to establish itself as a consistently applied principle of international law. However, the consensus that 'intervention' under R2P can only be conducted multilaterally and through the Security Council seems to be the most internalized aspect of R2P, which should assuage fears that R2P is imperialism under a different name. States who seek such policies will not be given legitimization under R2P. In the years since the World Summit, R2P has continued to be discussed, debated, and developed. It is to this continued discourse on R2P that this paper now turns.

### *Reaffirming and Renegotiating R2P*

Ban Ki-moon's 2009 report marked the first in a series of annual Secretary-General reports, each of which explore a specific aspect of R2P that is either contentious or in need of further development.<sup>120</sup> Ban Ki-moon's steadfast effort to keep states talking about R2P is responsible to some degree for the continued engagement of the international and academic

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<sup>120</sup> There are four reports in total, one for each year between 2009-12. The title for the reports reveal the issues they explore: *Implementing the responsibility to protect* (2009), *Early warning, and the responsibility to protect* (2010), *The role of regional and subregional arrangements in implementing the responsibility to protect* (2011), and *Responsibility to protect: timely and decisive response* (2012). These reports will be drawn from in coming chapters. Additionally, each report has been followed by an informal dialogue in the General Assembly.

community with the principle.<sup>121</sup> It is odd then, given his determination to sustain active discourse on R2P, that he would assert, “The task ahead is not to reinterpret or renegotiate the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner.”<sup>122</sup> There is no dispute that inconsistent implementation remains one of the most serious problems facing R2P today. However, to treat R2P as a static concept is to do injustice to the decades of debates and advocacy efforts that produced the very concept of R2P. Even if it is considered a ‘principle’ of international law, R2P is still fundamentally a concept, one which seeks to alter how states conceive their own identity and interests. As these identities and interests evolve, R2P will naturally evolve as well, a cyclical process explicated well by Wendt.

Wendt asserts that, “It is collective meanings that constitute the structures which organize our actions.”<sup>123</sup> If R2P is successful and comes to structure the way that states conduct their domestic and foreign affairs, then the principle will have necessarily changed the way in which the international community understands the principle today, since it will have evolved from an emerging norm to an internalized characteristic of state behavior. The act of changing from an ‘emerging norm’ to ‘internalized characteristic’ is itself a reinterpretation of the principle. Indeed, the first pillar of R2P is dependent on states interpreting its mandates into domestic law and negotiating between their present understanding of ‘self’ and sovereignty and those proposed by R2P. As Ban Ki-moon himself states, “if principles relating to the responsibility to protect are to take full effect and be sustainable, they must be integrated into each culture and society without

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<sup>121</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 32.

<sup>122</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 2.

<sup>123</sup> Wendt, “Anarchy is What States Make of It,” 418.

hesitation or condition, as a reflection of not only global but also local values and standards.”<sup>124</sup>

What Ban Ki-moon is arguing for is the vernacularization of R2P, the reinterpretation of R2P into local and specific contexts. Therefore, if the first pillar of R2P is to be internalized as envisioned by the Secretary-General, R2P must constantly be open to reinterpretation and renegotiation.

The divergent paths this process of interpretation can take is evidenced in the work of Bellamy and Evans, two of R2P’s greatest advocates. Although both operate off of the 2005 consensus on R2P, the two have very different visions of what R2P is and should become. Evans, a co-chair of the ICISS which first coined the term ‘responsibility to protect’, still draws heavily from this commission’s report and the crises that animated its formation. Despite his repeated assertions that prevention is the primary goal of R2P, his understanding of the principle’s role belies his true vision for R2P. For Evans, R2P serves “as a mobilizer of instinctive, universal action in cases of conscience-shocking killing, ethnic cleansing, and other such crimes against humanity.”<sup>125</sup> Hence, R2P’s principal utility is as a catalyst for international action when these crimes are occurring, not a gradual reformation of state identity and interests. This contrasts starkly with Bellamy’s proposed vision of R2P. Bellamy asserts that, “RtoP is best seen as an agreed principle that generates policy agenda in need of implementation, that by itself it is unlikely to act as a catalyst for timely and decisive action in response to mass atrocities.”<sup>126</sup> Understood this way, R2P is a “universal and enduring commitment,” not a situational clarion call as Evans envisions it.<sup>127</sup> Although both draw from the same World Summit Outcome Document as Ban Ki-moon, these advocates present divergent interpretations of the primary

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<sup>124</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 20.

<sup>125</sup> Evans, *The Responsibility to Protect*, 64.

<sup>126</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 71.

<sup>127</sup> *Ibid.*, 80.

objectives and potential of R2P, demonstrating that discussion and debate on R2P is far from over.

This process of reinterpretation and renegotiation is not limited to the world of academia. Following the events in Libya, certain UN member states began to reconsider the concept of R2P as it was emerging in practice. In September of 2011 Brazil introduced what it termed “Responsibility while Protecting”, or RwP. This initiative adopts the three pillar framework for R2P but seeks to severely curtail the use of third pillar action, especially military intervention.<sup>128</sup> While this paper will reserve further discussion of this new concept of RwP for later chapters, it is mentioned here to demonstrate that R2P, just like states, is a product of practice, and hence subject to the same changes in identity and interests that it seeks to foster in states.

### *Conclusion*

In examining the first pillar, it is clear that constructivist ideas regarding identity and interest are fundamental to the principal goal of R2P, this being to change state behavior. The first pillar of R2P seeks to alter state behavior by redefining what it means to be a modern sovereign state. By associating itself with the principle of sovereignty, R2P advocates seek to facilitate the internalization of responsible governance as an inseparable component of statehood. The consensus on this new norm of ‘sovereignty as responsibility’ was not accidental but the product of deliberate efforts by R2P’s norm entrepreneurs to change how states perceive themselves and their relationship with other states. Wendt provides invaluable insight into how state identities are formed through practice and how they can subsequently be transformed,

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<sup>128</sup> Andreas S. Kolb, “The Responsibility to Protect (R2P) and the Responsibility while Protecting (RwP): Friends or Foes?” *Global Governance Institute* (2012): 7, accessed via <http://www.globalgovernance.eu.html>.

insight which only constructivism can provide. In calling on states to reinterpret their identities and interests, R2P must remain open to this same reinterpretation as it too is the product of practice.

While it is difficult to argue against the idea that sovereigns should protect populations from mass atrocity crimes, it is much harder to operationalize this responsibility. What happens when a state fails to realize its first pillar responsibilities under R2P? To answer this question, this paper turns to the second pillar of R2P, the “commitment of the international community to assist States” in meeting their first pillar obligations.<sup>129</sup>

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<sup>129</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 11.

## 5. Supporting the Second Pillar: Liberal Institutionalism and *Perpetual Peace* through the Responsibility to Protect

The previous chapter's exploration of the first pillar and the dialogical and normative process that led to the development of R2P demonstrates that ideas do have their place in the study of international relations. While constructivism shows that identity and interests are dynamic and open to reconceptualization, it does not present a clear way of transforming this rhetoric into reality. All too familiar with the gap between state 'commitments' and state action, the drafters of R2P formulated what would become the second and third pillars of R2P. The second pillar, the responsibility of the international community to provide assistance and aid in capacity-building, is intended to assist those states who, though not actively perpetrating mass atrocities, are struggling to uphold their first pillar responsibilities. This call for international cooperation under R2P reflects the liberal belief that international institutions can foster cooperation and through this process change state behavior. The second pillar, then, lends itself well to a liberal analysis.

This chapter will employ the writings of theorists Keohane and Kant to examine the similarities between their aspirations for state relations and the aspirations of the second pillar of R2P. This examination will involve an exploration of Ban Ki-moon's second pillar recommendations, as well as proposals by Bellamy and Evans. While the second pillar seeks to foster a collective responsibility for the security of all populations, Chandler argues that R2P in reality reflects a divestment of Western responsibility in the issues facing the developing world, a critique which deserves examination. Finally, this chapter will close with an exploration of two cases which have come to exemplify the 'success' and 'failure' of R2P: the post-election

violence in Kenya from 2007-8 and the crisis in Darfur from 2003 to the present day. This chapter will conclude that the second pillar, while better addressing the root causes of mass atrocities and offering the greatest potential in helping states internalize and realize their first pillar responsibilities, remains severely underdeveloped, both conceptually and in practice. This underdevelopment underscores the need to rebalance the three pillars.

### *Liberal Institutionalism and R2P*

In his work, Keohane argues that international institutions have become a dominant and necessary feature of modern day global politics. States have increasingly come to rely on institutions to deal with pressing or persistent problems in international relations.<sup>130</sup> Keohane argues that this is because, “Institutions create the capability for states to cooperate in mutually beneficial ways by reducing the costs of making and enforcing agreements.”<sup>131</sup> The UN certainly fits within this understanding of institutions; by facilitating and providing the space and impetus for states to negotiate pressing world issues, the UN reduces the costs of reaching agreements among member states. Indeed, it is hard to imagine that a principle like R2P could have emerged and been unanimously adopted by world leaders had it not been through the UN. Keohane further asserts that, “The procedures and rules of international institutions ... determine what principles are acceptable as the basis for reducing conflicts and whether governmental actions are legitimate or illegitimate. Consequently, they help shape actors’ expectations.”<sup>132</sup> R2P is a reflection of this process; through the UN, states found that R2P was an acceptable principle for

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<sup>130</sup> Keohane, “International Institutions: Can Interdependence Work?”, 84.

<sup>131</sup> Ibid., 86.

<sup>132</sup> Ibid., 91.

reducing conflict and determining legitimate and illegitimate behavior. To understand R2P, therefore, one must see R2P as a product of this institutional framework, with all its possibilities and pitfalls.

While the UN has been successful in developing agreements and principles like R2P, enforcement has proven much more difficult to achieve. Despite its many bureaus and offices, the UN has largely depended on its member states to self-report and regulate regarding the obligations signed onto in these agreements. R2P is no exception. Regarding the second pillar specifically, no punishment or sanctions compel states to assist at-risk states. Because of this, the second pillar has a very low compliance pull.<sup>133</sup> Given this reality, it is easy to see why the second pillar remains underutilized and underdeveloped. Without direct incentives to do so, the international community has not developed an adequate policy ‘toolbox’ to engage with its second pillar responsibilities. However, as Ban Ki-moon states, “Too often ignored by pundits and policymakers alike, pillar two is critical to forging a policy, procedure and practice that can be consistently applied and widely supported.”<sup>134</sup> Given the critical role that the second pillar has in preventing atrocities and maintaining consensus around the principle, it is vital that this pillar be more seriously developed than it has to date. The Secretary-General in his 2009 report explored possible ways in which this pillar could be further developed and strengthened. His recommendations demonstrate a strong commitment to liberal institutionalist beliefs in the centrality of institutions in fostering dialogue and cooperation.

The second pillar of R2P is derived from paragraph 139 of the World Summit Outcome which states that “we [Member States] ... intend to commit ourselves, as necessary and

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<sup>133</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 71.

<sup>134</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 7.



appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.” Put another way, the second pillar is concerned with preventing mass atrocities before they occur and the role that the international community has in achieving this. In his 2009 report, Ban Ki-moon contends that this role could be fulfilled in four ways: (a) encouraging States to meet their responsibilities under pillar one; (b) helping them to exercise this responsibility; (c) helping them to build their capacity to protect; and (d) assisting States ‘under stress before crises and conflicts break out’.<sup>135</sup> The latter three, Ban Ki-moon claims, “suggest mutual commitment and an active partnership between the international community and the State.”<sup>136</sup> It is exactly such partnerships that liberal institutionalism seeks to cultivate and promote.

Ban Ki-moon stipulates that the second pillar, while crucial to R2P, is only applicable in a particular political environment. When a state is actively perpetrating mass atrocity crimes against its population, action under the second pillar would have little effect and could ultimately delay a timely and decisive response. While meant to combat the indecisiveness that had gripped the UN during the crises of the 1990s, the ability to immediately jump to more coercive action without exhausting peaceful measures first could lead to rash military action, as will be explored in the next chapter. However, “when national political leadership is weak, divided or uncertain about how to proceed, lacks the capacity to protect its population effectively, or faces an armed opposition that is threatening or committing crimes and violations relating to the responsibility to protect, measures under pillar two could play a critical role in the international implementation

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<sup>135</sup> Ibid., para. 28.

<sup>136</sup> Ibid.

[of R2P].”<sup>137</sup> The second pillar, therefore, is about developing cooperative and constructive relationships with states who struggle but desire to uphold their first pillar responsibilities.

Ban Ki-moon believes that the UN has a critical role to play in fostering the development of these relationships. The offices of the United Nations High Commissioner for Human Rights, the High Commissioner for Refugees, and UN special advisers among others are declared by Ban Ki-moon as having a special role to play in facilitating the implementation of the second pillar.<sup>138</sup> These offices and advisers can institute “dialogue, education, and training on human rights and humanitarian standards and norms.”<sup>139</sup> The Secretary-General points to the Office of the High Commissioner on Human Rights specifically, whose work seeks to alleviate social tensions and promote conflict prevention in nearly fifty countries.<sup>140</sup> A UN presence in countries such as northern Uganda and Sudan has helped protect children from harm and recruitment into violent conflict.<sup>141</sup> The UN, then, is not only the site of developing agreements on acceptable behavior, but a vital part of their realization.

In addition to this dialogical and protective role, the Secretary-General asserts that the UN has a vital role to play in early warning and assessment. As Ban Ki-moon asserts in his 2010 report, “The implementation of preventive measures ‘before crises and conflicts break out’ and the identification of which States ‘are under stress’ necessarily entail timely early warning and impartial assessment by the United Nations.”<sup>142</sup> This need for accurate information is not limited

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<sup>137</sup> Ibid., para. 29.

<sup>138</sup> Ibid., para. 30.

<sup>139</sup> Ibid., para. 33.

<sup>140</sup> Ibid., para. 35.

<sup>141</sup> Ibid., para. 36.

<sup>142</sup> UN General Assembly, *Early warning, assessment and the responsibility to protect: Report of the Secretary-General*, 14 July 2010, A/64/864, para. 4, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/864>.

to the second pillar, but if gathered and acted upon in a timely manner this information could help ensure that the international community does not have to resort to third pillar action.

“Indeed,” The Secretary-General states, “information, assessment, and early warning have become common functions and widely accepted tools in global (and regional) efforts to facilitate preventive action and multilateral cooperation.”<sup>143</sup> However, this capacity for information gathering and dissemination has been hindered by states’ fear of making potentially sensitive information available in a global forum such as the UN.<sup>144</sup> This fear reflects a universal obstacle to cooperation through institutions: fear of cheating and being ‘suckered’ by other states.

Bellamy explores this dilemma in hopes of discovering ways in which early warning and assessment can be strengthened. A key issue is interpretation: when are risks just ‘risks’ and when do they signal the imminent perpetration of mass atrocities?<sup>145</sup> Little is offered in the way of resolving this issue, other than the institutionalization of information-gathering in a joint office for Genocide and the Responsibility to Protect.<sup>146</sup> Ultimately, Bellamy concludes that, as consensus around R2P solidifies and information becomes increasingly accessible through open sources to non-state actors and governments alike, states will ease their hesitancy to share information and support the information-gathering capabilities of the UN.<sup>147</sup>

In concluding his explication of the second pillar, the Secretary-General outlines five capacities which have been identified by member states as critical to the successful implementation of pillar one responsibilities and hence in need of support through pillar two

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<sup>143</sup> Ibid., para. 8.

<sup>144</sup> Ibid., para. 7.

<sup>145</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 126.

<sup>146</sup> Ibid., 135.

<sup>147</sup> Ibid., 141-2.

assistance. Each of these capacities – conflict-sensitive development analysis, indigenous mediation capacity, consensus and dialogue, local dispute resolution capacity, and the capacity to replicate capacity – all revolve around the ability to conduct and maintain constructive dialogue to mitigate societal tensions. While these capacities address the domestic sphere, their objectives reflect those that liberal institutionalism seeks to realize on a global scale: to mitigate tensions within international relations through constructive dialogue and cooperation between states. Liberal institutionalism, then, underpins not only R2P’s development and implementation, but also the form of its policy recommendations.

Despite the central role the UN plays in realizing R2P’s mandate, R2P cannot be implemented by the UN alone. The 2009 report asserts that, “the public diplomacy of the Secretary-General has not been matched by the willingness of Member States ... to give concrete shape to either his promises or his warnings.”<sup>148</sup> Unless member states take their obligations under the second pillar of R2P seriously, the diplomatic efforts of the UN will fall flat and undermine the credibility of both the UN and R2P. Bellamy and Evans share this concern, and in response seek to develop effective policy that states can employ to uphold the second pillar and R2P itself.

#### *A ‘Perpetual Peace’ through Liberal Policies*

Stemming from his ‘long-term policy agenda’ approach to R2P, Bellamy is primarily concerned with addressing the societal and structural issues that often precipitate instability and the perpetration of mass atrocity crimes. After conducting an exploration of episodes of mass

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<sup>148</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 31.

killing since 1945 and the political and economic situations that underlaid them, Bellamy argues that “the principal precondition for civil wars, in which the majority of mass atrocities are committed, is a country’s national income and that the principal precondition for atrocities committed outside the context of war is authoritarian government.”<sup>149</sup> This argument leads Bellamy to conclude that economic development and democratization are two of the most important policies that the international community can pursue to prevent mass atrocities. Evans shares this commitment to encouraging good governance and economic development, asserting that representative and responsive governance “is at the heart of effective long-term conflict and mass atrocity prevention” and that “Economic development matters.”<sup>150</sup> Ban Ki-moon also comes out in favor of such policies, arguing that, “Expanding development assistance ... would undoubtedly have a net positive effect on preventing crimes and violations relating to the responsibility to protect if such assistance ... increases [the poor and minority groups’] opportunities for meaningful political participation.”<sup>151</sup>

The belief that economic interdependence and representative government can lead to peace is one of liberalism’s most classic arguments. Kant is often considered the father of this theory and hence his work provides the foundation for much of the propositions for second pillar action offered by R2P advocates. Kant contends that a republican government, which he defines as representative with separation between executive and legislative bodies, is the only form of governance that can pull men out of a state of war. This is because citizens, who bear the burdens of war, are unlikely to consent to conflict, consent which is needed in a republican

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<sup>149</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 109.

<sup>150</sup> Evans, *The Responsibility to Protect*, 88, 91.

<sup>151</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 43.

government.<sup>152</sup> The foundations of the economic development argument are also evident in

Kant's work. Kant holds that:

Because of all the forces under the control of the power of the state the power of money is the most indispensable, states see themselves compelled, of course not by motives of morality, to further the maintenance of peace, and, wherever in the world war threatens to break out, to prevent it by mediation, just as if they were in a permanent league with each other for this purpose.<sup>153</sup>

If Kant's assertion is true, then not only does a stronger domestic economy predispose states against conflict and war, but economic considerations form the very basis on which states seek to enter into cooperation with each other. Therefore, effective economic development would be the surest way of preventing mass atrocities and continuing cooperation through international institutions.

Indeed, Kant sees such a 'league' or 'federation' as the only civil course for states to take. "We now look with deep disdain on the attachment of savages to their lawless freedom, their preference to be engaged in incessant strife rather than submit themselves to a self-imposed restraint of law, their preference of wild freedom to rational freedom." This disdain for 'wild freedom' is shared by Evans, who laments the lingering view that sovereignty is an unequivocal right to non-intervention and non-interference.<sup>154</sup> Evans seeks to transform this non-interference into non-indifference by offering specific 'tools' states can utilize to fulfill their second pillar responsibilities. He divides his recommendations into four categories: political/diplomatic measures, economic/social measures, constitutional/legal measures, and security sector

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<sup>152</sup> Kant, "Eternal Peace," *The Advocate of Peace* 59, no. 5 (1897): 113.

<sup>153</sup> Kant, "Eternal Peace," *The Advocate of Peace* 59, no. 7 (1897): 165.

<sup>154</sup> Evans, *The Responsibility to Protect*, 21.

measures.<sup>155</sup> Each of these categories are in turn divided into long- and short-term policies that can be taken to address structural or immediate factors that could lead to mass atrocities.

Many of his long-term policies are supportive in nature and reflect the general aspirations of both liberalism and institutionalism, aspirations such as promoting good governance, promoting membership in international organizations, supporting economic development, promoting the rule of law, and promoting fair constitutional structures.<sup>156</sup> Many of the short-term actions, however, are punitive in nature and revolve around threats of political and economic sanctions, international criminal prosecution, arms embargoes, or ending military cooperation programs.<sup>157</sup> Many of these long- and short-term recommendations are not new to the world of foreign policy; many states have already made at least rhetorical commitments to implement or utilize these measures.<sup>158</sup>

While devoting considerable time to exploring these widely recognized measures, Evans also offers some policy tools that are quite innovative. Listed as part of his longer-term economic and social strategies, Evans explores an emerging concept called ‘education for tolerance’. Realizing that ethnic division and hatred can begin and be taught at a young age, advocates of this concept call for formal education programs that “cut across ethnocentric divides and stereotypes, and increase positive attitudes and interaction between members of previously

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<sup>155</sup> Ibid., 87.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> The US State Department’s Bureau of Democracy, Human Rights, and Labor proudly asserts on its website that “Promoting freedom and democracy and protecting human rights around the world are central to U.S. foreign policy.” (<http://www.state.gov/j/drl/>) Sanctions, too, have become a common foreign policy tool, with 33 countries currently under European Union sanctions. ([http://eeas.europa.eu/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf)) Promoting democracy and threatening sanctions, therefore, are common rhetorical and policy devices fully familiar to state governments.

hostile or suspicious groups.”<sup>159</sup> Additionally, Evans recommends community peace-building programs as a way of empowering local communities to overcome their societal divisions. Seeds for Peace, a program which brings Arab and Israeli youth together to interact and foster relationships, offers a promising example of the possibilities for such programs.<sup>160</sup> Closing with a more direct policy tool, Evans also suggests that economic incentives be implemented in addition to, or in place of, sanctions. Evans recognizes such a recommendation is controversial: “critical domestic audiences ... prefer to bludgeon perceived bad guys into submission than reward their actual or potential wrongdoing with taxpayer-funded handouts”.<sup>161</sup> However, as he points out, “incentives have the great attraction for policymakers that they actually tend to work”.<sup>162</sup> One need only look at the psychological effects sanctions produce – hostility, fear, resistance – to see why incentives, which convey a sense of goodwill and cooperation, provide a more fruitful avenue for second pillar engagement.<sup>163</sup> Such positive engagement stands a much higher chance of realizing Kant’s vision of “intelligent association and friendly relationship” between states than actions which seek to threaten and intimidate states into compliance.<sup>164</sup>

A common thread among these policy recommendations and the second pillar more generally is an emphasis on helping faltering states ‘help themselves’.<sup>165</sup> While advocates of R2P see this as an affirmation of the principal position of the state in its own internal affairs, critics have interpreted this push for individual state responsibility rather differently. Chandler

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<sup>159</sup> Evans, *The Responsibility to Protect*, 92.

<sup>160</sup> *Ibid.*, 92-3.

<sup>161</sup> *Ibid.*, 94.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*, 95.

<sup>164</sup> Kant, “Eternal Peace,” *The Advocate of Peace* 59, no. 6 (1897): 141.

<sup>165</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 39.



argues that the principle of R2P reflects a “broader context of international disengagement and the desire to shift political responsibility away from leading Western states.”<sup>166</sup> Read this way, the deficit of serious pillar two implementation is not due to a lack of policy ‘tools’, but rather a lack of political will within the international community to engage with often ‘third world’ problems.

At first glance, this assessment appears devastating for R2P. If the principle represents nothing more than a symbol of Western disengagement from global conflicts and crises, R2P would be its own antithesis. However, after a full exploration of Chandler’s argument, one finds that Chandler’s evidence points less towards R2P being a divestment of Western responsibility than a reconceptualization of this responsibility. This is clearly evidenced in the following quote:

Where ‘humanitarian intervention’ put the emphasis on leading Western states overtly intervening to take responsibility for stopping mass atrocities, the new-look R2P argues that Western responsibility is much more limited. Essentially the role for Western powers is an indirect one, providing support to the ‘weak’ and ‘failing’ state in enhancing its ‘sovereignty’. Rather than the R2P being a coda for direct humanitarian intervention it has become the key normative justification for the more indirect forms of intervention associated with international statebuilding.<sup>167</sup>

It is hard to see why Chandler so strongly condemns this re-envisioning of Western responsibility. Would Chandler prefer for the West to return to a policy of wanton unilateral military intervention? It would seem so, given his criticism of Western states for funding and training the African Union’s African Standby Force for peacekeeping missions rather than conducting these missions themselves. This paper sees this criticism as fundamentally odd. Given the West’s ugly history of colonialism and military engagement abroad, one would think

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<sup>166</sup> David Chandler, “Understanding the gap between the promise and reality of the responsibility to protect,” in *Critical Perspectives on the Responsibility to Protect: Interrogating theory and practice*, ed. Philip Cunliffe (New York: Routledge, 2011), 20.

<sup>167</sup> *Ibid.*, 27.

that empowering regional and local actors to address regional and local conflicts would be much preferable to Western military intervention. Rather than seeing the ‘indirect’ methods condemned by Chandler as a divestment of responsibility, this paper views this new form of Western engagement, embodied by the second pillar, as a *responsible* way for Western states to engage in preventive foreign policy.

Throughout the rest of his essay Chandler continues to be critical of this “liberal institutional approach” which advocates that building the capacity of a state’s component institutions will help prevent mass atrocities.<sup>168</sup> Chandler rejects the notion that failing state institutions are to blame for the perpetration of mass atrocities, or at least that external attempts at reviving these institutions will succeed.<sup>169</sup> Chandler, quick to criticize, is loath to offer alternative solutions. While this paper recognizes that the second pillar does not directly offer ways of resolving global inequalities, this paper holds that the second pillar at least attempts to address these issues by encouraging economic development and cooperation at the institutional and state-to-state level.

While the second pillar provides the most direct and constructive way to prevent mass atrocities, its inconsistent implementation undermines its potential. This paper now turns to an exploration of two case studies, Darfur and Kenya. These two cases, often considered the ‘best’ and ‘worst’ implementations of R2P, underscore the promises and pitfalls of R2P and second pillar action.

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<sup>168</sup> Ibid., 28.

<sup>169</sup> Ibid., 30.

### *The 'Success' and 'Failure' of R2P*

The crisis in Darfur and the post-electoral violence in Kenya were chosen because each offers insight into the importance of second pillar action in addressing the root causes of conflict and the role that the UN can play in effective diplomacy. Additionally, these two cases are often heralded as the prime examples of the success or failure of R2P. Although both of these examples involve African states, the selection of these cases is not meant to perpetuate the belief that R2P's implementation is limited to this region. Rather, these cases have been selected because they reveal where R2P has done well, and where R2P can do better. This section begins with an examination of Darfur and concludes with Kenya, following each situation to the present day.

#### Darfur

The Darfur region, which has existed in a state of tension with the Sudanese state since its incorporation at the beginning of the 20<sup>th</sup> century, was plunged into crisis in 2003 when uprisings by non-Arab Sudanese in Darfur were met with brutal violence by state-backed janjaweed militias. In Bellamy's account, the janjaweed militias led a "campaign of mass killing and displacement that left around 250,000 people dead and over 2 million displaced."<sup>170</sup> Despite warning signs – years of drought, inflamed regional tensions, an influx of weapons, and sporadic conflicts between farmers and nomadic tribes – the international community ultimately did little to try and prevent the coming atrocities.<sup>171</sup> Numerous rebel groups formed shortly after the outbreak of violence and plunged the region into chaos. When R2P was adopted two years later, lawmakers attempted to invoke R2P in relation to the situation in Darfur but received little

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<sup>170</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 52.

<sup>171</sup> "Genocide in Darfur," United Human Rights Council, accessed 28 April 2013, <http://www.unitedhumanrights.org/genocide/genocide-in-sudan.htm>.

response.<sup>172</sup> A peace process negotiated in Doha, Qatar was finally agreed to in May of 2011.

The Sudanese Government and the Liberty and Justice Movement, a coalition of eleven rebels groups patched together by international mediators to save the negotiation process, officially signed onto the Doha Document for Peace in Darfur on 14 July 2011.<sup>173</sup> Meetings are still underway to negotiate the implementation of the Doha peace agreement, the most recent taking place on 9 April 2013.<sup>174</sup> Despite the progress being made, rebel groups are still active and making their rejection of the Doha agreement known, blowing up an evacuated train just four days prior to the 9 April meeting.<sup>175</sup>

The UN attempted to address the situation in Darfur throughout the crisis. These included Security Council resolutions condemning Sudan's actions, establishing a UN Mission in Sudan (UNMIS), imposing sanctions, and referring the situation in Darfur to the International Criminal Court (ICC).<sup>176</sup> The latter not only marked the first Security Council referral to the ICC, it also led to the eventual indictment of President Omar al-Bashir, the first ever ICC indictment of a sitting president.<sup>177</sup> Marking yet another first, Security Council 1706 (2006) was the first time that the Security Council had used R2P language in reference to a specific situation.<sup>178</sup> The African Union also expended considerable time and resources to the crisis, establishing a African

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<sup>172</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 52-3.

<sup>173</sup> Mollie Zapata, "Darfur: The Doha Peace Process, December 2010-present," Enough Project, accessed 28 April 2013, <http://www.enoughproject.org/blogs/darfur-doha-peace-process-december-2010-present>.

<sup>174</sup> Hamza Jilani, "The fifth meeting of the Implementation Follow-Up Commission on Doha Document for Peace in Darfur under way in Doha yesterday," Gulf-Times, accessed 28 April 2013, <http://www.gulf-times.com/qatar/178/details/348582/doha-agreement-and-donor-meet-raise-darfur-peace-hopes>.

<sup>175</sup> Hamza Jilani, "The fifth meeting of the Implementation Follow-Up Commission on Doha Document for Peace in Darfur under way in Doha yesterday."

<sup>176</sup> S/RES/1556 (2004), S/RES/1590 (2005), S/RES/1591 (2005), and S/RES/1593 (2005), respectively.

<sup>177</sup> "Omar Hassan Ahmad al-Bashir," The Hague Justice Portal, accessed 28 April 2013, <http://www.haguejusticeportal.net/index.php?id=9502>.

<sup>178</sup> Alex J. Bellamy, *Global Politics and the Responsibility to Protect*, 53. The specific Security Council resolution was S/RES/1706 (2006).

Union Mission in Sudan in 2006.<sup>179</sup> Despite these resolutions and efforts by the UN, the Security Council, and regional organizations alike, the general assessment of the situation in Darfur has been that “Darfur represents RtoP’s primary test case, a test which the principle is generally reckoned to have failed.”<sup>180</sup>

While some are quick to point toward the ethnic qualities of the Darfur crisis, Noah Bassil holds that “the fundamental cause of the conflict has been a struggle over diminishing natural resources.”<sup>181</sup> Attempts to Reduce the conflict in Darfur to Arab/non-Arab or nomadic/sedentary binaries ignore the root causes that led to the politicization of these identities. As Bassil asserts, “any effort to present a lasting resolution to conflict necessitates an uncovering of the initial causes of the dispute between the differing groups.”<sup>182</sup> Bassil argues that it is Darfur’s severe underdevelopment that has left the Sudanese government unable to meet the people of Darfur’s demand for state resources following years of drought and environmental degradation, which in turn has polarized relations between the region and the state.<sup>183</sup> This analysis lends credence to Bellamy’s argument that economic development is key to preventing and ending mass atrocities. Bellamy directly discusses the role that resource scarcity had in Darfur, asserting that, “The role that the increasing scarcity of water and grazing land, both necessary for survival in Darfur, played in sharpening the conflict there is a case in point [of the importance of relative standing in a context of scarcity].”<sup>184</sup> The Darfur case demonstrates the importance of the second

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<sup>179</sup> “About UNAMID: Background,” African Union - United Nations Mission in Darfur, accessed 28 April 2013, <http://unamid.unmissions.org/Default.aspx?tabid=10998&language=en-US>.

<sup>180</sup> Alex J. Bellamy, *Global Politics and the Responsibility to Protect*, 53.

<sup>181</sup> Noah Bassil, “The Failure of the State in Africa: The Case of Darfur,” *AQ: Australian Quarterly*, Vol. 76, No. 4 (July-August 2004), 28.

<sup>182</sup> Noah Bassil, “The Failure of the State in Africa: The Case of Darfur,” 27.

<sup>183</sup> Bassil, “The Failure of the State in Africa: The Case of Darfur,” 28.

<sup>184</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 104.

pillar in preventing mass atrocities. If the international community had taken the severe resource situation in Darfur seriously as it was unfolding, it may have been possible to mitigate the tensions that arose and ultimately consumed the region.

While not directly a second pillar measure, it is worth examining the effect the ICC had in Darfur. Although marking a turning point for both R2P and the ICC, the results of this investigation and indictment should give advocates of ICC action within an R2P framework pause. Following his indictment, al-Bashir expelled thirteen humanitarian aid groups which he accused of conspiring with the ICC from Sudan.<sup>185</sup> As a New York Times article reported, “The expulsion of organizations that provide clean water, medical treatment, food and shelter for millions of Sudanese in the war-racked region of Darfur has thrown the world’s largest aid operation into disarray, putting the lives of millions of displaced people at risk.”<sup>186</sup> Others have expressed concern that the indictment only increased the risk of greater violence in the region and could further undermine the ICC’s image within Sudan.<sup>187</sup> President al-Bashir’s indictment, which put countless populations at greater risk, seems to have undermined R2P’s objective of protecting populations from mass atrocities. Given this, should the ICC still have a place within R2P?

Evans discusses this dilemma at length, calling it the ‘peace versus justice problem’:

should the demands of justice – to bring an end once and for all to the almost universal impunity that has prevailed in relation to these crimes in the past, and to create an effective deterrent to their commission in the future – ever yield, in the case of a clash between them, to the demands of peace, namely to bring an end to some conflict that has

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<sup>185</sup> Lynsey Addario and Lydia Polgreen, “Aid Groups’ Expulsion, Fears of More Misery,” *New York Times*, 22 March 2009, accessed 28 April 2013, [http://www.nytimes.com/2009/03/23/world/africa/23darfur.html?\\_r=0](http://www.nytimes.com/2009/03/23/world/africa/23darfur.html?_r=0).

<sup>186</sup> Ibid.

<sup>187</sup> “ICC vs. Sudan: The Complexities Behind the al-Bashir Case,” *Spiegel Online*, 05 March 2009, accessed 28 April 2013, <http://www.spiegel.de/international/world/icc-vs-sudan-the-complexities-behind-the-al-bashir-case-a-611614.html>.

wreaked untold destruction and misery until then and which may continue to do so if a peace agreement cannot be reached?<sup>188</sup>

Evans notes that this dilemma is most present when conflict is ongoing and peace agreements are in the balance, a circumstance which accurately described the situation in Darfur at the time of the ICC's indictment.<sup>189</sup> The ICC is an incredible innovation that can potentially be developed into an effective tool to deter individuals from and hold individuals accountable for the perpetration of mass atrocity crimes,. However, its use must be balanced by a real-world calculation of the potential costs such a course of action may bear, since they will most likely be born by those already suffering.

Evans's summary of the situation in Darfur captures quite well the dilemma of attempting to use coercive solutions to this problem:

The inability here to use coercive military measures does not mean that this is a case of 'R2P failure; it just means that the international response to the Sudan government's ill-will or incapacity has to take other forms, including the application of sustained diplomatic, economic, and legal pressure to change the cost-benefit balance of the regime's calculations.<sup>190</sup>

This paper arrives at the same conclusion. The inability of troop deployment and other coercive means to protect populations from further harm demonstrates that the second pillar must be strengthened and faithfully implemented before a situation has reached the level of a crisis. The roots of this conflict in environmental degradation and resource scarcity point toward the need for long-term engagement in economic development and capacity-building so that the Sudanese state can effectively respond to the growing demands of its populations in the face of dwindling

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<sup>188</sup> Evans, *The Responsibility to Protect*, 117.

<sup>189</sup> Ibid.

<sup>190</sup> Evans, *The Responsibility to Protect*, 61.

resources. While this is not meant to completely dismiss coercive action, such action must take into account the possible consequences both for long-term solutions and short-term suffering.

### Kenya

Unlike the slow international response seen in Darfur, the 2007-08 crisis in Kenya witnessed rapid mobilization both within the UN and regional bodies. With sporadic violence already breaking out prior to the election, the crisis officially began when sitting president Mwai Kibaki was declared the winner of Kenya's December 2007 presidential elections. Supporters of opposition candidate Raila Odinga declared that the elections had been rigged, sparking violence that plunged the country into crisis.<sup>191</sup> Up to 1,000 people were killed and 300,000 displaced following the contested election, but by February of 2008 a mediation team headed by former Secretary-General Kofi Annan and composed of African Union officials had begun negotiations between the two factions.<sup>192</sup> The negotiations took place from 6-28 of February, concluding with a power sharing agreement between Kibaki who would serve as president and Odinga who would serve as Prime Minister with a coalition government consisting of 40 cabinet members and 50 assistant ministers.<sup>193</sup> The repeated referrals to R2P by both former and current Secretary-Generals Kofi Annan and Ban Ki-moon has led the Kenyan case to be considered one of *the* defining cases of R2P.<sup>194</sup>

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<sup>191</sup> "Kenya: State failed to protect citizens during unrest - UN report," *IRIN humanitarian news and analysis*, accessed 28 April 2013, <http://www.irinnews.org/InDepthMain.aspx?InDepthID=68&ReportID=77360>.

<sup>192</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 54.

<sup>193</sup> "Kenya: Agencies appeal for funds as new government named," *IRIN humanitarian news and analysis*, 14 April 2008, accessed 28 April 2013, <http://www.irinnews.org/InDepthMain.aspx?InDepthID=68&ReportID=77753>.

<sup>194</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 54.



The relatively rapid resolution of this conflict through mediation has led the case to be “widely trumpeted as the best example of RtoP in practice.”<sup>195</sup> Evans articulates Kenya’s significance this way: “Kenya in early 2008 is the best recent example of the early, and effective, mobilization of political and diplomatic resources to bring back under control an explosive mass atrocity situation [...] that could have quickly become, without this intervention, very much more catastrophic in scale.”<sup>196</sup> What is most telling about this ‘best example’ is what this intervention did not involve. There were no sanctions, no troops, no referrals to the ICC prior to the successful completion of negotiations. Instead, diplomatic action framed within a R2P framework was quickly mobilized to engage Kenya’s political leaders to arrive at a peaceful resolution.

While this case should be considered a success in implementing R2P’s second pillar, suffering and displacement did still occur. This violence demonstrates the weaknesses of Kenya’s electoral institutions and the rule of law, witnessed by the ability of political agents to create such instability and devastation in such a short amount of time. While its institutions were weak, Kenya was still a democracy, a fact which seems to weaken the liberal assertion that democracy leads to less violence. However, as discussed briefly in chapter 3, this trend only tends to hold for mature democracies. While a strong correlation has been found between democratic institutions and the absence of mass atrocities, highly factionalized partial democracies have proven to be incredibly volatile.<sup>197</sup> Bellamy asserts that the first five to ten years are critical for establishing a stable and legitimate democracy, and hence the international community should

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<sup>195</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 54.

<sup>196</sup> Evans, *The Responsibility to Protect*, 106.

<sup>197</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 101.

spend particular effort in defending budding democracies from unrest, a goal which would fit within a pillar two framework.<sup>198</sup> Ironically, Kenya's next presidential elections were held almost exactly five years after its highly factionalized 2007 presidential elections and subsequent atrocities. It is all too appropriate, then, for this paper to reexamine this 'best example' in the wake of these most recent presidential elections to see if Kenya's democracy had strengthened since it was last upheaved. But first, a brief exploration of the events between 2008 and the 4 March 2013 elections is needed.

As part of the 2008 power sharing agreement, the Kenyan government was charged with establishing a commission of inquiry to investigate the post-election violence. This investigation led to the recommendation that a special tribunal be established to try those believed to be responsible for instigating and perpetrating the violence, a recommendation which was shot down by Kenya's National Assembly.<sup>199</sup> The refusal of the Kenyan government to establish these tribunals led ICC prosecutor Luis Moreno Ocampo to initiate his own investigation which resulted in the indictment of several individuals including Deputy Prime Minister Uhuru Kenyatta, a candidate in the 2013 presidential elections. The ICC found that there were reasonable grounds to believe that Kenyatta was responsible as an indirect perpetrator of five counts of crimes against humanity.<sup>200</sup> Despite this indictment and pending trial, Kenyatta won

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<sup>198</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 116.

<sup>199</sup> "Kenyan MPs reject violence court," *BBC*, 12 February 2009, accessed 28 April 2013, <http://news.bbc.co.uk/2/hi/africa/7886395.stm>.

<sup>200</sup> "ICC-01/09-02/11: The Prosecutor v. Uhuru Muigai Kenyatta," *International Criminal Court*, accessed 28 April 2013, [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/icc01090211/Pages/icc01090111.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/icc01090211/Pages/icc01090111.aspx).

the election, his victory becoming official with the Kenyan supreme court's decision to uphold that the election was free and fair and Odinga's concession shortly thereafter.<sup>201</sup>

The pre-election period was filled with tension just as in 2007. Analysts feared that a disputed election could lead to the same violence witnessed in 2008, especially if either Kenyatta or Odinga refused to concede the election.<sup>202</sup> However, peace has largely prevailed, with Kenyatta sworn in on 9 April 2013.<sup>203</sup> What remains a point of contention, however, is the ICC's refusal to drop Kenyatta's indictment. Kenyatta's lawyers have urged the ICC to drop their charges, or to at least reevaluate its case following the recanting of witness testimony.<sup>204</sup> Some analysts have even gone so far as to argue that the ICC's indictment of Kenyatta might have led Kenyans to rally behind him as a gesture against Western interference in Kenya's politics.<sup>205</sup> Kenyatta, while maintaining his innocence, has vowed to cooperate with the Hague.<sup>206</sup>

This election bears symbolic importance beyond Bellamy's five year assessment. Kenyatta and Odinga are the sons of Kenya's first president and vice president, both of whom played a vital role in ending Britain's colonial rule in the 1960s. In light of this symbolism, Kenya's rejection of the West's indictment of their president-elect again questions the role of the

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<sup>201</sup> Faith Karimi, Nima Elbagir, and Laura Smith-Spark, "Kenya's top court upholds Kenyatta win in disputed election," *CNN*, 31 March 2013, accessed 28 April 2013, [http://edition.cnn.com/2013/03/30/world/africa/kenya-election-ruling/?hpt=hp\\_t4](http://edition.cnn.com/2013/03/30/world/africa/kenya-election-ruling/?hpt=hp_t4).

<sup>202</sup> Tom Odula and Jason Straziuso, "Kenya Elections: Violence, Long Lines Mar Votes," *Huffington Post*, 4 March 2013, accessed 28 April 2013, [http://www.huffingtonpost.com/2013/03/04/kenya-election-violence\\_n\\_2805233.html](http://www.huffingtonpost.com/2013/03/04/kenya-election-violence_n_2805233.html).

<sup>203</sup> Jessica Hatcher, "Kenyatta inauguration to go ahead despite crimes against humanity charges," *The Guardian*, 8 April 2013, accessed 28 April 2013, <http://www.guardian.co.uk/world/2013/apr/08/kenyatta-inauguration-war-crimes-charges>.

<sup>204</sup> "Kenya's Kenyatta urges ICC to drop charges," *AlJazeera*, 18 March 2013, accessed 28 April 2013, <http://www.aljazeera.com/news/africa/2013/03/201331855559279809.html>.

<sup>205</sup> Karimi, Elbagir, and Smith-Spark, "Kenya's top court upholds Kenyatta win in disputed election."

<sup>206</sup> "ICC won't drop charges against Kenyatta," *Daily Monitor*, 21 March 2013, accessed 28 April 2013, <http://www.monitor.co.ug/News/World/ICC-won-t-drop-charges-against-Kenyatta/-/688340/1726528/-/juye2j/-/index.html>.

ICC within R2P. The second pillar, engaged in Kenya through timely diplomacy and mediation, is meant to foster cooperation between states. The ICC, on the other hand, appears to be driving a wedge between states who experience mass atrocities and those who seek to assist. Again, although not part of the second pillar, the ICC's role in Kenya as well as Darfur provide an opportunity to consider the utility of the ICC as part of an R2P framework.

### *Conclusions*

This chapter has explored how both classical liberalism and liberal institutionalism have influenced and shaped R2P, especially in terms of the policies proposed in the second pillar. The interconnectedness between theory and policy makes it impossible to understand the aspirations and intentions of the second pillar absent liberal international relations theory. The policies recommended by the second pillar mark a departure from the humanitarian interventionist nature of foreign engagement prior to R2P. While some interpret this as a divestment of responsibility by Western states, this paper contends that the second pillar is more accurately understood as a more responsible form of foreign policy, living up to the principles of cooperation and assistance embodied in R2P. The cases of Darfur and Kenya both show the importance of early second pillar engagement through economic development and state capacity-building. While these very visible cases provide an excellent opportunity to explore how the second pillar was or could have been implemented, it is important to note that pillar two is most successful when no intervention is necessary. As Evans' asserts, "diplomacy to prevent the merely threatened initial outbreak of conflict or mass violence is most successful when nothing happens, and nobody notices."<sup>207</sup>

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<sup>207</sup> Evans, *The Responsibility to Protect*, 90.

From Burundi to Romania, R2P has helped mobilize diplomatic efforts that have never made the headlines.<sup>208</sup> Successful cooperation does not make the news, and hence R2P's greatest successes, for better or worse, will largely remain invisible.

This chapter has also briefly explored the role of the ICC in R2P. In the cases of Darfur and Kenya, recourse to the ICC appeared to result in the souring of foreign relations at best and the direct endangerment of populations at worst. Considered part of third pillar action, this exploration of the ICC serves as a useful transition to the third pillar and an examination of coercive action's role in protecting populations from genocide, ethnic cleansing, war crimes, and crimes against humanity.

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<sup>208</sup> Ibid.

## **6. Rebalancing the Third Pillar: Realism and Reassessing the Use of Force After Libya**

The previous chapter's exploration of the second pillar focused on theories and policies which are built off of cooperation and the belief that international assistance can help mitigate and prevent mass atrocities. However, as the historical record shows, such action has either been underutilized or has failed to prevent states from descending into chaos. Libya serves as a recent example of state repression escalating into violent conflict despite UN efforts to broker a peaceable solution. The UN's most decisive action, the authorization of member states "to take all necessary measures" to protect civilians, resulted in a massive NATO bombing campaign, the ousting and murder of President Muammar Gaddafi, and an environment permissive to egregious human rights abuses by both rebel and government forces. Realists like Mearsheimer would contend that Libya provides a clear example that institutions are ultimately the pawns of powerful states. Mearsheimer's analysis of institutions provides critical insight into the limitations inherent to the third pillar of R2P and the dangers of remaining mired in a military approach to mass atrocities. O'Connell's argument regarding the incompatibility of military force with civilian protection further underscores the need to shift the surfeit attention, energy, and resources that have been spent on the third pillar toward effectively developing the other two pillars of R2P. Only when the three pillars of R2P are balanced will R2P be capable of fulfilling its mandate of protecting populations from mass atrocity crimes.

This chapter will be divided into three sections. The first will explore Ban Ki-moon's vision of the third pillar, as well as recommendations put forth by Bellamy and Evans. Mearsheimer's argument on institutions will be used to analyze these advocates' arguments, shedding light on the difficulties states face in faithfully implementing third pillar

responsibilities. The next section will explore third pillar action taken in relation to the 2011 crisis in Libya and evaluate how effective the third pillar's implementation was in protecting populations.<sup>209</sup> The final section will be examine O'Connell's argument for a 'responsibility to peace' in relation to the Libyan case and how similar ideas such as Brazil's RWP could potentially help rebalance the third pillar of R2P. This chapter will conclude that, while the potential for coercive force may be necessary to compel states to take their first pillar responsibilities seriously and incentivize cooperation through the second pillar, the third pillar cannot come to define R2P. If it does, the aspects of R2P that distinguish it from the tired principle of humanitarian intervention will disappear, consensus will be lost, and the international community will find itself in the same cycle of reaction which R2P's framers sought to break.

### *Responding to Insecurity*

In his 2009 report, the Secretary-General derives the third pillar of R2P – the responsibility to respond in a timely and decisive manner to mass atrocities – from paragraph 139 of the World Summit Outcome Document, which asserts that, “we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate.”<sup>210</sup> This collective action is conditional, dependent on

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<sup>209</sup> This chapter, devoted to an exploration of the third pillar responsibility of ‘timely and decisive response’, is primarily concerned with how states fulfill their responsibility to respond to the perpetration of mass atrocities. This chapter’s discussion of Libya, then, will mainly focus on the actions taken by the UN and NATO in response to the conflict. This chapter will provide some background information on the situation in Libya, but given the scope of this paper will not fully explore the political or economic tensions that led to the conflict. Europa World provides a good survey of Libyan history, which can be accessed via the following link: <http://www.europaworld.com/entry/EE001519>.

<sup>210</sup> UN General Assembly, *Implementing the responsibility to protect*, para. 49.

whether peaceful means are inadequate and national authorities are manifestly failing to protect their populations.<sup>211</sup> When these conditions are met, the international community has a responsibility to take action to protect these populations. While Ban Ki-moon asserts that the third pillar could include non-coercive measures such as mediation, the pillar's true nature is best reflected when the Secretary-General asserts, "no strategy for fulfilling the responsibility to protect would be complete without the possibility of collective enforcement measures, including through sanctions or coercive military action in extreme cases."<sup>212</sup> Some of the more coercive measures covered under the third pillar of R2P include referral to the ICC, freezing financial assets, imposing travel bans, suspension of credit, and the use of force if authorized through the Security Council.<sup>213</sup> This attempt to coordinate and sanction the use of force through the Security Council reflects the desire to institutionalize cooperation regarding military action, a feat which Mearsheimer holds is nearly impossible for institutions to achieve.

Mearsheimer contends that institutional cooperation is highly unlikely when it comes to the realm of security. While liberal institutionalism is capable of fostering economic cooperation, "the theory's proponents pay little attention to the security realm, where questions about war and peace are of central importance."<sup>214</sup> Hence liberal institutionalism, while fitted for an exploration of the second pillar, is not well suited to handle or coordinate security issues. Mearsheimer argues that this is because when it comes to the sort of economic and diplomatic cooperation called for in the second pillar, cheating is much less likely to threaten the survival of the state.

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<sup>211</sup> Ibid.

<sup>212</sup> Ibid., para. 56.

<sup>213</sup> UN General Assembly and Security Council, *Responsibility to protect: timely and decisive response*, paras. 29, 31-32. Many of these would go on to be utilized during the Libyan crisis.

<sup>214</sup> Mearsheimer, "The False Promise of International Institutions," 16.



This, however, is not the case when it comes to security. As Mearsheimer notes, “Given that ‘the costs of betrayal’ are potentially much graver in the military than the economic sphere, states will be very reluctant to accept the ‘one step backward, two steps forward’ logic which underpins the tit-for-tat strategy of conditional cooperation.”<sup>215</sup> This reluctance is clearly evident when it comes to humanitarian intervention. The ‘Mogadishu effect’, a term used to describe the US’s continued reluctance to put troops on the ground for humanitarian purposes following the death of American soldiers in Somalia, is a testament to the lasting effect being ‘suckered’ can have on foreign policy.<sup>216</sup> Given this reality, military action under R2P will most likely be “based on the self-interested calculations of the great powers” rather than humanitarian ideals.<sup>217</sup>

Evans recognizes that military action under R2P is largely hostage to the political considerations of the Permanent Five Security Council members (US, Britain, France, China, and Russia). It is this recognition that leads him to so adamantly push for the development of criteria for military action which, if fulfilled, would compel the Security Council to take decisive action.<sup>218</sup> Bellamy, however, rejects this call for criteria, arguing that, “criteria are very unlikely to produce consensus or manufacture political will in real cases.”<sup>219</sup> Even if the ‘just war’ criteria set out by Evans were established, these would still provide little assurance that Permanent Five states would agree on whether crimes were occurring or if a certain ‘threshold’ had been met.<sup>220</sup> Mearsheimer would concur with Bellamy’s analysis. To ask the Security Council to adopt criteria is to ask powerful states to relinquish control over their foreign policy decisions. Given that

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<sup>215</sup> Ibid., 19.

<sup>216</sup> Evans, *The Responsibility to Protect*, 27.

<sup>217</sup> Mearsheimer, “The False Promise of International Institutions,” 7.

<sup>218</sup> Evans, *The Responsibility to Protect*, 141.

<sup>219</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 163.

<sup>220</sup> Ibid., 166.

Mearsheimer views rules as reflections of “state calculations of self-interest”, the likelihood of Permanent Five states to agree to such criteria is minimal.<sup>221</sup> Bellamy therefore sees little utility in expending precious political capital on trying to establish criteria for military action.

Bellamy, however, does have his own concerns when it comes to military intervention. Some critics of R2P assert that the possibility for military intervention under R2P motivates disenfranchised or rebels groups to pursue suicidal policies in order to draw the international community to intervene on their behalf.<sup>222</sup> Therefore, these critics argue, R2P ultimately leads to the very crimes that the principle seeks to prevent. If this theory, which Bellamy calls ‘moral hazard theory’, is true, any sort of military capability within R2P would undermine the principle’s capacity to prevent atrocities. However, Bellamy demonstrates that, from the period 1990-2008, rebellions against established governments have steadily decreased, which he argues undermines the moral hazard argument. Bellamy’s analysis, however, ends with the year 2008, only three years after R2P’s adoption and before the Arab Spring had taken hold of the Middle East. Given the importance of this event, this paper analyzed new conflict data for the 2008-11 period to see if this downward trend still holds.

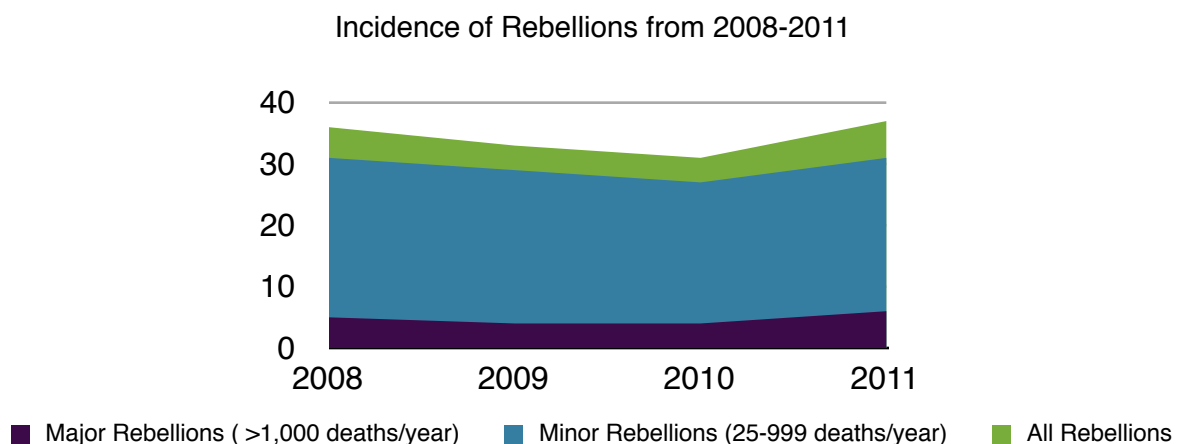
Using the same database as Bellamy (the Uppsala Conflict Data Program), I limited my query to internal armed conflicts from 2008-2011 between the government of a state and one or more internal opposition groups, conflicts which this paper will refer to as ‘rebellions’. In addition to this parameter, I included rebellions that also involved intervention from other states. I explored both minor and major rebellions, minor signifying 25-999 deaths per year and major signifying over 1,000 deaths per year. I examined all three sources of conflict covered in the

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<sup>221</sup> Mearsheimer, “The False Promise of International Institutions,” 13.

<sup>222</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 71.

dataset, which are territory, government, and both territory and government. My findings were somewhat ambiguous. In Bellamy's analysis, total rebellions dropped from 45 in 1990 to 26 in 2008. My analysis found that, while total rebellions remained below 40, a general downward trend was interrupted by an uptick in rebellions in 2011. Given that the Arab Spring is widely acknowledged to have started in December of 2010 following protests in Tunisia, this increase in rebellions makes sense. It is difficult, however, to determine the motivations of the rebel movements that swept through the region. Did protesters take to the street with the expectation that the UN or other states would intervene on their behalf? Or were these protests simply the culmination of years of repression under autocratic regimes? If protesters did believe that foreign powers would come to their aid, their belief was sorely misplaced. Of the 118 rebellions that occurred within this four year period, only 19 saw the intervention of a foreign government. While rebellions have certainly declined since Bellamy's initial measurement in 1990, the 2008-11 period, and the Libyan case in particular, could potentially casts doubts on Bellamy's outright rejection of moral hazard theory.



Data collected from: Themnér, Lotta & Peter Wallensteen, 2012. "Armed Conflict, 1946-2011." *Journal of Peace Research* 49(4). Accessed via: [http://www.pcr.uu.se/research/ucdp/datasets/ucdp\\_prio\\_armed\\_conflict\\_dataset/](http://www.pcr.uu.se/research/ucdp/datasets/ucdp_prio_armed_conflict_dataset/).

*The Crisis in Libya*

Bellamy is not only interested in the motivations of possible rebels. While the perpetration of mass atrocities may seem so base as to have no foundation in reason, Bellamy asserts that, “political leaders select mass atrocities as a rational strategy for pursuing their objectives ... When their back is against the wall, governments especially know that they are as likely to succeed as fail if they resort to mass atrocities – an attractive proposition if they think there are few viable alternatives.”<sup>223</sup> The Gaddafi regime demonstrated such logic in 2011 when public protests quickly turned into full-out rebellion against the state.

In the years leading up to the 2011 civil war, Gaddafi’s Great Socialist People’s Libyan Arab Jamahiriya was far from the pariah that it had been during much of the twentieth century. In 2003, the Gaddafi regime announced that it would cease to pursue weapons of mass destruction and would allow international inspectors into the country to dismantle its weapons program.<sup>224</sup> Many analysts saw this as a possible first step in Libya’s reintegration into the international community.<sup>225</sup> While this increased accessibility and cooperation seemed to hint toward a reformed Libya, the state’s reforms were largely limited to its foreign policy. Populations within Libya, still haunted by the disappearances and liquidation of political dissidents during the 1980s, continued to be subjected daily to human rights abuses such as arbitrary detention and torture.<sup>226</sup> This led Amnesty International to report that:

The slow pace of domestic reform contrasts sharply with Libya’s increased visibility on the international scene and prompts fears that members of the EU and the USA, rather

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<sup>223</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 2.

<sup>224</sup> U.S. Congressional Research Service, “Disarming Libya: Weapons of Mass Destruction,” (RS21823; April 22, 2004), by Sharon A. Squassoni and Andrew Feickert, 1, <http://fpc.state.gov/documents/organization/32007.pdf>.

<sup>225</sup> U.S. Congressional Research Service, “Disarming Libya: Weapons of Mass Destruction,” 1.

<sup>226</sup> “‘Libya of Tomorrow’: What Hope for Human Rights?”, *Amnesty International*, (London: Amnesty International Publications, 2010), 12, 20, <http://www.amnesty.org/en/library/info/MDE19/007/2010>.

than using the opportunity to encourage reforms, are turning a blind eye to the human rights situation in order to further their national interests, which include cooperation with counter-terrorism, the control of irregular migration, trade and other economic benefits.<sup>227</sup>

This concern regarding the blind eye turned by the EU and the US toward Libya's continued human rights violations seems to give evidence to Mearsheimer's assertion that, "Each side cares about the other only to the extent that the other side's behavior affects its own prospects for achieving maximum profits."<sup>228</sup> As long as the Libyan government continued to cooperate with US and EU national interests, these states were willing to leave Libya's human rights abuses widely unchallenged.

All of this changed, however, when the longstanding regimes in Tunisia and Egypt toppled under the tide of popular dissent. Fearful that this tide may wash over Libya, the Libyan government began arresting prominent activists and writers in an attempt to curb a popular uprising before it started.<sup>229</sup> These arrests did not preempt, but rather precipitated public demonstrations against the government, with protesters organizing a 'Day of Rage' on 17 February 2011.<sup>230</sup> State security forces attempted to disband peaceful demonstrators, but their excessive use of force only further fueled a movement already beginning to call for the end of the Gaddafi regime.<sup>231</sup> Protests spread throughout the country in a matter of days. On 22 February Gaddafi utilized his first public speech since the unrest to promise that he would "purge Libya inch by inch, room by room, household by household, alley by alley, and individual by

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<sup>227</sup> Ibid., 9.

<sup>228</sup> Mearsheimer, "The False Promise of International Institutions," 13.

<sup>229</sup> "The Battle for Libya: Killings, Disappearances and Torture," *Amnesty International*, (London: Amnesty International, 2011): 7, <http://www.amnesty.org/en/library/info/MDE19/025/2011/en>.

<sup>230</sup> Ibid., 16.

<sup>231</sup> Ibid.

individual until the country is purified.”<sup>232</sup> Libya, long plagued by political repression and severe economic inequality, had within the span of a week had descended into a mass atrocity situation.

The Security Council for its part was quick to recognize the danger of the deteriorating situation in Libya and adopted resolution 1970 (2011) on the 26 February. In the resolution, the Security Council directly invoked “the Libyan authorities’ responsibility to protect its population,” placing the Libyan crisis within a R2P framework from the very first Security Council resolution.<sup>233</sup> The Arab League, the African Union, and the Secretary General of the Organization of the Islamic Conference all quickly condemned the actions taking place in Libya, demonstrating that there was quick and universal recognition of the violations and crimes that were occurring.<sup>234</sup> The resolution would go on to institute an arms embargo, travel ban, and asset freeze on certain Libyan authorities believed to be complicit with the perpetration of violence.<sup>235</sup> The Security Council should be commended for its quick adoption of such a hard-hitting resolution. While this resolution marks a political decisiveness not often seen within the Security Council, it also marks the beginning in a series of missteps which shattered the possibility of a peaceable solution in Libya from the outset.

As explored in the previous chapter, ICC investigations have led to questionable results in terms of ensuring the immediate protection of populations from harm. Hence it is somewhat shocking that the Security Council in its very first resolution on Libya referred the situation to

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<sup>232</sup> Ibid.

<sup>233</sup> UN Security Council, *Security Council resolution 1970 (2011)*, 26 February 2011, S/RES/1970(2011), preamble, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1970%282011%29](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970%282011%29).

<sup>234</sup> Ibid.

<sup>235</sup> Ibid., paras. 9, 15, and 17, respectively.

the ICC, despite the fact that Libya is not a signatory to the Rome Statute.<sup>236</sup> While the three sanctions listed above demonstrate timely and decisive response by the Security Council that could potentially check Libyan authorities, an ICC referral prior to any mediation or peace process immediately closes the door on any possibility for negotiations. While sanctions can be lifted once behavior is corrected, indictments cannot, at least without undermining the Court. Knowing that he would likely face indictment and a criminal tribunal if he were to relinquish his power, this referral put Libya on a path to a scorched-earth policy described by Bellamy at the beginning of this section.

Shortly after this resolution was adopted, government officials began defecting to the opposition in significant numbers.<sup>237</sup> On 2 March, opposition forces announced the formation of the National Transitional Council (NTC), headed by former Justice Minister Mustafa Abdul Jalil who had defected shortly after the protests began. This opposition group claimed that they, not the state, were the legitimate representatives of the Libyan people. On 6 March, Secretary-General Ban Ki-moon appointed former Foreign Minister of Jordan Abdul Khatib as his Special Envoy to Libya.<sup>238</sup> On 17 March, the Security Council passed its second resolution relating to the conflict in Libya. This resolution again utilized a responsibility to protect framework, asserting “the responsibility of Libyan authorities to protect the Libyan population”.<sup>239</sup> Adopted only 11 days after Khatib was appointed to broker negotiations between the warring parties, the

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<sup>236</sup> Ibid., para. 4. Given Libya’s non-party status, there was little chance that Gaddafi would ever actually see trial unless his regime was overthrown. Given this reality, the ICC referral could be seen as foreshadowing the events to come.

<sup>237</sup> “The Battle for Libya: Killings, Disappearances and Torture,” *Amnesty International*, 18.

<sup>238</sup> “Concerned about Civilian Casualties in Libya, Secretary-General Urges End to Disproportionate Use of Force, Safety for All,” UN Department of Public Information, 7 March 2011, SG/SM/13429, accessed 28 April 2013, <http://www.un.org/News/Press/docs/2011/sgsm13429.doc.htm>.

<sup>239</sup> UN Security Council, *Security Council resolution 1973 (2011)*, 17 March 2011, S/RES/1973(2011), preamble, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1973%282011%29](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973%282011%29).

resolution instituted a no-fly zone and authorized member states “acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures ... to protect civilians and civilian populated areas under threat of attack”.<sup>240</sup> Interpreted as the authorization of the use of force, Libya marks the first time that R2P has been utilized through the UN to sanction the use of force against a non-consenting state.

This whirlwind of events – the formation of the NTC, appointment of a Special Envoy, and sanctioning the use of force, all within fifteen days – demonstrate that little time was given to explore, develop, or implement more peaceful measures. The *days* between the appointment of a UN mediator and the call for force offered little opportunity for meaningful negotiations to take place. With the threat of force and ICC indictment realized before mediations had begun, little leverage was left for mediation efforts to bring parties to the table. While the UN’s response was certainly ‘timely and decisive’, it was also incredibly disjointed. With the use of force authorized, Libya was now open to foreign military intervention, escalating the conflict already consuming the state.

Mearsheimer offers a possible reason why the UN, known for its diplomatic and mediatory capabilities, was unable to get either side of the conflict to take negotiations seriously. “The theory [of liberal institutionalism] is of little relevance in situations where states’ interests are fundamentally conflictual and neither side thinks it has much to gain from cooperation.”<sup>241</sup> While aimed at interstate relations, this quote effectively captures the political situation that rebels and the Gaddafi regime, both vying to be the legitimate representative of the Libyan state, faced upon entering negotiations. With the use of force sanctioned and the US mission

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<sup>240</sup> Ibid., paras. 6, 4. Paragraph 4 further stipulates that ‘all necessary measures’ excludes a foreign occupation force of any form on Libyan territory.

<sup>241</sup> Mearsheimer, “The False Promise of International Institutions,” 15.



established two days after, rebels had an incentive to wait and see whether the military intervention played out in their favor. Gaddafi had every incentive to wait it out as well, but for very different reasons. With an ICC indictment imminent, assets frozen, travel restricted, and foreign enemy forces authorized to ‘use all necessary measures,’ Gaddafi was confronted with the choice of dying in prison, dying at the hands of insurgents or NATO bombs, or fighting for his life. Given these diametrically opposed positions, created in part by Security Council mismanagement of coercive measures, neither side had anything to gain from negotiations. Foreign forces, then, would authoritatively determine the outcome of Libya’s civil war.

The US initiated military engagement on 19 March 2011 with Operation Odyssey Dawn, but soon turned the mission over to NATO who deployed Operation Unified Protector on 31 March. While France, the US, and Britain were the primary actors in the intervention, the mission consisted of a broad-based coalition of states, including Qatar and the United Arab Emirates.<sup>242</sup> Whereas the UN diplomatic response was muddled and disjointed, NATO action was highly coordinated and fine-tuned. During its operation NATO deployed over 9,700 strike sorties which destroyed over 5,900 military targets.<sup>243</sup> As Evans acknowledges, “When it comes to capability at the hard-power end of the spectrum, the North Atlantic Treaty Organization has a great deal going for it.”<sup>244</sup> At the close of its seven month mission on 31 October 2011, the Western world largely viewed the mission as a great success. Two NATO officials declared that

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<sup>242</sup> “Libya no-fly zone: Coalition firepower,” *British Broadcasting Corporation*, 21 October 2011, accessed 28 April 2013, <http://www.bbc.co.uk/news/world-africa-12806112>,

<sup>243</sup> North Atlantic Treaty Organization, “Operation UNIFIED PROTECTOR: Final Mission Stats,” *NATO Public Diplomacy Division*, 02 November 2011, accessed 28 April 2013, [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_11/20111108\\_111107-factsheet\\_up\\_factsfigures\\_en.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_11/20111108_111107-factsheet_up_factsfigures_en.pdf).

<sup>244</sup> Evans, *The Responsibility to Protect*, 190.

the operation in Libya has “rightly been hailed as a model intervention.”<sup>245</sup> If Operation Unified Protector is to serve as a model for interventions to come, it is worth examining the consequences of its air campaign on the populations it was meant to protect on the ground.

Operation Unified Protector took a definitively offensive approach to its mandate to “take all necessary measures” to protect Libyan populations. Its actions, targeted against government forces and military capabilities, led to the destruction of thousands of buildings, material, and lives thought to be aiding the Gaddafi regime. Despite the care that NATO claims to have exerted in selecting targets and carrying out its missions, civilian lives were still lost.<sup>246</sup> A Human Rights Watch investigation found that 72 civilian lives, of which 44 were women and children, had been taken by NATO air strikes.<sup>247</sup> Despite the technological advancement of NATO’s weapons systems, the utilization of defective bombs, outdated intelligence, and a lack of ground personnel all led to mistakes which cost civilians’ their lives.<sup>248</sup>

Some may argue that 72 civilian deaths, while tragic, represent a very small number compared to the lives that could have been lost through a protracted conflict. This paper does not intend to be over-idealistic and recognizes that decisions, military or otherwise, take place in an imperfect world with imperfect information. Given this reality, 72 civilian casualties over a seven month engagement presents a rather low number for the intensity of the conflict and NATO measures being taken. However, regardless of whether 1 or 1,000 civilians are killed, this

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<sup>245</sup> Ivo H. Daalder and James G. Stavridis, “NATO’s Victory in Libya: The Right Way to Run an Intervention,” *Foreign Affairs* 91 (March/April 2012): News Bank, accessed 28 April 2013.

<sup>246</sup> C.J. Chivers and Eric Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll,” *The New York Times*, 17 December 2011, accessed 28 April 2013, [http://www.nytimes.com/2011/12/18/world/africa/scores-of-unintended-casualties-in-nato-war-in-libya.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2011/12/18/world/africa/scores-of-unintended-casualties-in-nato-war-in-libya.html?pagewanted=all&_r=1&).

<sup>247</sup> “NATO: Investigate Civilian Deaths in Libya,” *Human Rights Watch*, 14 May 2012, accessed 28 April 2013, <http://www.hrw.org/news/2012/05/14/nato-investigate-civilian-deaths-libya>.

<sup>248</sup> Chivers and Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll.”

paper rejects the notion that any human life is acceptable collateral damage. Any measure taken under the auspices of R2P that directly results in the loss of civilian life constitutes an imperfect exercise of the responsibility to protect. If the third pillar is to truly reflect a commitment to protecting populations from the horrors of mass atrocities, then strategic decisions must revolve around people, not politics.

However, realists like Mearsheimer would hold absurd the idea that military considerations could revolve around anything other than power politics. Realism argues that, “wars should not be fought for idealistic purposes, but instead for balance-of-power reasons.”<sup>249</sup> Realism, then, would either assert that third pillar action is impossible in practice or is simply serves as a front for the ulterior motives of states. Statements by NATO officials following Operation Unified Protector seem to give credence to this realist view. In a jointly written article, Ivo Daalder (US Permanent Representative to NATO) and James Stavridis (Supreme Allied Commander Europe and Commander of the US European Command) assert that NATO “succeeded in protecting ... civilians and, ultimately, in providing the time and space necessary for local forces to overthrow Muammar al-Qaddafi.”<sup>250</sup> To have civilian protection buttressed against such a clearly political objective undermines the principle of neutrality which R2P is meant to employ. By firmly taking sides in the conflict, NATO undermined an already weak peace process. Even more disturbing, this quote reveals that NATO’s objectives extended beyond protecting populations; the organization sought to facilitate Gaddafi’s ouster.

The influence of power politics in the implementation of pillar three poses a threat not only to the establishment of viable peace processes in the midst of a crisis, but to future victims

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<sup>249</sup> Mearsheimer, “The False Promise of International Institutions,” 48.

<sup>250</sup> Daadler adn Stavridis, “NATO’s Victory in Libya: The Right Way to Run an Intervention.”

of mass atrocities as well. If NATO's objective was to topple Gaddafi, it can look on Operation Unified Protector as a job well done without engaging in critical self-reflection about the human costs the operation entailed. As C.J. Chivers and Eric Schmitt argue, "The failure to thoroughly assess the civilian toll reduces the chances that allied forces, which are relying ever more heavily on air power rather than risking ground troops in overseas conflicts, will examine their Libyan experience to minimize collateral deaths elsewhere."<sup>251</sup> However, pressure from organizations such as Human Rights Watch and Amnesty International have forced NATO to at least pay lip-service to a commitment to reevaluate its tactics to reduce civilian casualties in the future.<sup>252</sup>

According to Mearsheimer, "Realists maintain that institutions are basically a reflection of the distribution of power in the world. They are based on the self-interested calculations of the great powers, and they have no independent effect on state behavior."<sup>253</sup> The third pillar of R2P, dealing with the controversial issue of coercive force, is all about power and how and why it is exerted. The case of Libya, the first-ever sanctioning of the use of force under R2P without the intervened state's consent, demonstrates the susceptibility of the third pillar to 'the self-interested calculations of great powers,' represented in this case by NATO. The intervening forces' focus on military victory over peace may have led to the ousting of an autocratic regime, but it did nothing to lay the groundwork for a transition to democratic governance. This lack of institutional development has left Libyans the victims of torture and indefinite detention, the same violations of human rights witnessed under the Gaddafi regime.<sup>254</sup> Despite the election of a democratic

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<sup>251</sup> Chivers and Schmitt, "In Strikes on Libya by NATO, an Unspoken Civilian Toll."

<sup>252</sup> "Counting the cost of Nato's mission in Libya," *British Broadcasting Corporation*, 31 October 2011, accessed 28 April 2013, <http://www.bbc.co.uk/news/world-africa-15528984>.

<sup>253</sup> Mearsheimer, "The False Promise of International Institutions," 7.

<sup>254</sup> "Detention Abuses Staining the New Libya," *Amnesty International*, (London: Amnesty International, 2011): 5, <http://www.amnesty.org/en/news-and-updates/report/new-libya-%E2%80%99stained%E2%80%99-detainee-abuse-2011-10-13>.

government in July of 2012, the Libyan state has shown little progress in controlling the proliferation of arms and securing the rule of law.<sup>255</sup> The UN Support Mission in Libya (UNSMIL), established in September 2011, has much work to do in developing state institutions and good governance, work which would have been made easier by a commitment to this process at the onset of and throughout the conflict.

The Libyan case offers three lessons for the future of R2P. First, the modest but still significant reforms that were pursued prior to the uprising offered a critical opportunity for states to engage in their second pillar responsibilities and in turn help Libya uphold its own first pillar responsibilities. Therefore, a deeper commitment needs to be made to engage states before conflict breaks out. Second, the haphazard use of sanctions and quick recourse to the use of force offered by the Security Council before serious mediation efforts were underway jeopardized and ultimately undermined the potential for a peaceful resolution to the crisis. The Security Council in the future should approach sanctions as tools in the mediation process rather than symbolic gestures of disapproval. Finally, while realism can help states pragmatically weigh the cost of military intervention, the Libyan case reveals the desperate need to break out of an overly-realist conception of R2P which places the emphasis on punitive rather than protective policy and self-interest over collective responsibility.

#### *A 'Responsibility to Peace'*

It is this concern with the punitive rather than protective nature third pillar action has taken that animates O'Connell's critique of R2P. O'Connell argues that the 'new militarism' of

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<sup>255</sup> Security Council resolutions 2016 (2011), 2017 (2011), 2040 (2012), 2095 (2013) all make reference to the continued violation of human rights and proliferation of arms.

humanitarian intervention out of which R2P has developed is antithetical to human rights, since the assurance of human rights are dependent on the presence of peace.<sup>256</sup> Brazil's proposal of a 'Responsibility while Protecting' (RwP) mirrors O'Connell's call for a reconceptualization of R2P into a 'responsibility to peace', as both seek to limit recourse to the use of force. Her exploration of the limitations and dangers of military intervention provide critical insight into the third pillar and further underscores the need to rebalance the three pillars, lest R2P come to perpetuate the very harm it aims to prevent.

Whereas R2P advocates trace the emergence of the norms underlying R2P, O'Connell traces the development of the 'norm of peace', or what Evans might cynically call the 'norm of non-interference'. Indeed, Evans's and O'Connell's works appear to be in dialogue with each other, tracing parallel yet opposing norms of state behavior. Like R2P, O'Connell asserts that this norm is relatively new and has its origins in the UN Charter.<sup>257</sup> While both norms may draw from the same institutional source and be driven by the same desire to alleviate human suffering, O'Connell holds that any humanitarian principle that attempts to justify military intervention will inevitably lead to more suffering that it prevents. This is because, "Inherent in the idea of humanitarian intervention is the contradiction that it is acceptable to kill and injure some, even wholly innocent people; to preserve the human rights of others."<sup>258</sup> Such a contradiction is untenable to O'Connell, and should be to R2P advocates as well. The 72 lives that were lost as a direct result of NATO actions in Libya provide 72 reasons why military intervention cannot become the norm under R2P if the principle is to fulfill its mandate to protect populations.

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<sup>256</sup> Mary Ellen O'Connell, "Responsibility to peace: A critique of R2P," in *Critical Perspectives on the Responsibility to Protect: Interrogating theory and practice*, ed. Philip Cunliffe (New York: Routledge, 2011), 71.

<sup>257</sup> Ibid., 71-2.

<sup>258</sup> Ibid., 79.

While many R2P critics tend to focus on the vulnerability of third pillar action to the national interests of the intervening powers, O’Connell is willing to forgive the inherently self-serving nature of humanitarian intervention should it prove to help prevent and mitigate mass atrocities.<sup>259</sup> However, her interrogation of humanitarian intervention leads O’Connell to conclude that, “military intervention for humanitarian purposes, on balance, has accomplished more harm than good.”<sup>260</sup> O’Connell, reflecting a sense of pragmatism which even Mearsheimer would admire, asserts that R2P supporters who attempt to excuse intervention’s poor record by blaming states’ unwillingness to fully and faithfully commit to all the responsibilities such intervention requires are deluding themselves. “[S]ince states are unlikely *ever* to commit the massive resources that may be necessary for successful humanitarian intervention, in complex multi-faction conflicts stretching over vast or inhospitable territory, this factor weights against changing the law in favor of intervention.”<sup>261</sup> The falterings of the post-reconstruction effort in Libya attest to the international community’s limited commitment to long-term engagement, a reality which can only be altered through the strengthening of the second, not third, pillar.

One of O’Connell’s criticisms in particular strikes at the very heart of why intervention in Libya not only failed to achieve R2P objectives in the short or long term, but also why it sets a dangerous precedent for future third pillar action: “International law recognizes the human right of self-determination and that right is violated when outside powers determine a community’s leadership.”<sup>262</sup> This quote could be a direct response to NATO actions in Libya. It is clear from the NATO officials quoted in the above section that the ousting of Gaddafi was just as much of a

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<sup>259</sup> Ibid., 77.

<sup>260</sup> Ibid., 78.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

strategic priority as ending the conflict. At its best, these actions reflect a naive and dangerous belief that forcibly changing governments can fix systemic problems of inequality and oppression. At its worst, these actions put R2P in danger of becoming a cover for, and synonymous with, regime change. If R2P comes to symbolize the overthrowing of repressive regimes, all the good that could be achieved through a serious engagement with the first and second pillars will be lost to powerful states' political manipulations of the third pillar. Libya provides the opportunity and imperative for a serious reevaluation of the international community's engagement with R2P to date. More needs to be done to strengthen and develop the first two pillars, but this can only be done if states are willing to shift their focus and resources from the coercive logic and tactics of the third pillar.

Some have taken on this challenge and have begun to reconceptualize a more balanced R2P. Following the events in Libya, Brazilian delegates at the UN developed a concept paper on what they termed the 'responsibility while protecting' (RwP). Adopting the same three pillar framework constructed by Secretary-General Ban Ki-moon, RwP seeks to "constrain recourse to the use of force and partly even to pillar three action more generally."<sup>263</sup> Like O'Connell, Brazil took note that military intervention, regardless of its aims or intent, often causes more harm than it prevents.<sup>264</sup> RwP contends that the "emphasis [of R2P] should be on preventive diplomacy as a means of reducing the risk of armed conflict in the first place."<sup>265</sup> This emphasis in turn demands that all diplomatic measures be explored and exhausted before third pillar action is considered. This linear approach to the three pillars (action must begin with the first pillar and only in

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<sup>263</sup> Kolb, "The Responsibility to Protect (R2P) and the Responsibility while Protecting (RwP): Friends or Foes?" 2.

<sup>264</sup> Ibid., 7.

<sup>265</sup> Ibid., 7-8.



extreme cases end with the third) stands in contradiction to Ban Ki-moon's repeated assertions that the three pillars are not chronological and that decisive action should not be beholden to an overly-rigid adherence to process over response.<sup>266</sup> However, given the great cost – monetarily, materially, physically, psychologically, and otherwise – of any form of violence or warfare, this paper sees little problem with demanding a deeper commitment to cooperative and constructive engagement before states have recourse to military action.

If a state still proves unwilling to protect its populations despite serious efforts by the international community to engage the state through mediatory measures, RWP recognizes that military action may need to be taken, but it holds that this action must have clearly articulated objectives prior to military engagement.<sup>267</sup> This requirement provides a clear way to ensure that all states understand and come to consensus on the purpose of military action, as well as a way to hold states accountable during a military intervention. NATO action, justified under “all necessary measures” and the establishment of a no-fly zone, clearly went beyond the intended purposes of Security Council resolution 1973 (2011), but a straight reading of the resolution text offers little ground for concerned states to make this argument since NATO's actions technically complied with the resolution's mandate. Clearly defined objectives, then, could go a long way to ensuring that third pillar action conforms to the stated and primary purpose of R2P, to protect populations from mass atrocities.

As O'Connell rightly states, “Supporters of the concept ‘responsibility to protect’ (R2P) promote it with the sincere aim of gaining greater respect for human rights in the world.”<sup>268</sup> This

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<sup>266</sup> Ibid., 13.

<sup>267</sup> Ibid., 8.

<sup>268</sup> O'Connell, “Responsibility to peace: A critique of R2P,” 71.

aim, however, is not always reflected by the actions states take, especially when it comes to coercive action under the third pillar of R2P. The Libyan case demonstrates that military action, a fundamentally realist exercise, is far too vulnerable to the political interests and manipulations of powerful states and to date has undermined the mandate of R2P. O'Connell offers a possible solution, a way to remedy the imbalance that the third pillar has caused: "If proponents of R2P begin to associate it with the additional R2P, responsibility to peace, the original concept will have a better chance of succeeding in the protection of human rights."<sup>269</sup> Absent this commitment to peace, however, O'Connell comes to the disheartening conclusion that, "To get states to focus again on peaceful means to promote human rights and prevent atrocities before they happen may well require abandoning the whole R2P enterprise. If the concept is becoming an obstacle to humanitarianism, its creators should not resist its passage into history."<sup>270</sup>

This paper does not reach such a drastic conclusion, but it does agree that a serious reassessment of R2P is needed if the principle is not to become another tired excuse for regime overthrow and the use of force. As examined in the third chapter, realism as a theory can act as a check against grandiose military agendas. Realism in practice, however, has led to an overemphasis on military rather than mediatory measures, on coercion rather than cooperation, and the perceived immutability of state behavior rather than the dynamic potential of R2P. Hence, both the third pillar and realism must be checked and reassessed if R2P is to be an effective principle that can prevent the perpetration of mass atrocities. This reassessment is the subject of the next chapter.

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<sup>269</sup> Ibid., 80.

<sup>270</sup> Ibid.

## *Conclusions*

As Bellamy asserts, “through its articulation of a continuum of measures incorporating political and diplomatic strategies alongside legal, economic and military options, RtoP points towards holistic strategies of engagement that can overcome the temptation to conceive complex problems in exclusively military terms.”<sup>271</sup> While true in theory, R2P has not yet achieved this in practice. As the Libyan case demonstrates, states were quick to conceive the crisis as a security issue in need of military action rather than the manifestation of structural violence and inequalities that needed to be collectively engaged and reformed through mediatory and diplomatic means. The expectations that the international community has established for potential perpetrators of mass atrocities – that cooperation will lead to indictment as was the case in Kenya and to some extent Darfur – pushes “their back against the wall” and forces them into a mindset where mass atrocity crimes appear to be the only viable option to preserve both their power and their lives.<sup>272</sup> Military intervention, then, may ultimately serve to entrench genocidal policies rather than deter them.

While the evidence remains ambiguous, military intervention may also act as an incentive for oppressed populations or groups to seek the violent overthrow, rather than the peaceful reform, of repressive governments. This is not meant to be taken as a defense of autocratic regimes or genocidaires; rather, the articulation of such a possibility is meant to demonstrate that violence only begets more violence and fails to address the structural issues that lead to repression and abuse in the first place. These structural issues, therefore, are likely to persist in spite of new governance if opposition groups are brought to power through force.

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<sup>271</sup> Bellamy, *Global Politics and the Responsibility to Protect*, 187.

<sup>272</sup> Some critics have held that the mere possibility of armed intervention in Darfur has undermined any attempt at negotiations. Related to ‘moral hazard theory’, see: Bellamy, *Global Politics and the Responsibility to Protect*, 53.

Military intervention, then, has thus far only served to augment the violence and suffering that R2P seeks to prevent. For this reason, the pillars of R2P are in serious need of restructuring. Both O'Connell and Brazilian UN delegates offer insight into how this might be done and the form that this restructuring could take. While R2P advocates may fear that losing recourse to the use of force means sacrificing R2P's teeth or enforceability, these advocates must seriously consider the cost of such bite. If R2P is a commitment to protect populations from the crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity, then it must also be a commitment against violence. Decades of realist foreign policy have led many states to pursue ever greater military capabilities at the cost of developing effective diplomatic tools. When all the tools in the foreign policy toolbox are hammers, every problem is treated like a nail. Thus, the international community's implementation of R2P will continue to reflect a militaristic bias until states are led to develop other, less coercive tools. The development of stronger, more effective diplomatic tools and engagement will help to rebalance the three pillars of R2P. This rebalance, however, is unlikely to occur if military intervention remains a viable and unconditional option.

## 7. Rebalancing the Pillars of R2P and International Relations

It is clear from the Libyan case that the third pillar, and by extension realism, remains the dominant prism through which R2P is perceived and pursued by academics and policymakers alike. Indeed, much of Bellamy's and Evan's work is devoted to defending R2P as a principle apart from humanitarian intervention, asserting that it offers more than just a justification for intervention.<sup>273</sup> It is nearly impossible to see such cyclical debates ending as long as realist considerations on security (and insecurity) continue to disproportionately determine states' foreign policy agendas. How can realism's pervasive influence on the implementation of R2P be checked while still recognizing the contributions of the theory to international relations more generally? Adrian Gallagher's exploration of the tensions between realism and R2P seeks to answer just this question, and in the process provides valuable insight into the path ahead for R2P.

Gallagher begins his exploration with a recognition of the indisputable dominance of realism in global politics. In recognizing this, Gallagher contends that, "realism will continue to shape foreign policy responses toward normative commitments, such as the R2P, in the future."<sup>274</sup> The implementation of R2P has been most directly effected by realist prioritization of national interests over collective interests when it comes to foreign policy. The tension between the collective nature of R2P and the nationalistic quality of realist thought leads to what Gallagher calls a 'clash of responsibilities'. When collective responsibilities appear to undermine a state's domestic responsibilities, realism contends that "states have a national responsibility to

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<sup>273</sup> See Bellamy, *Global Politics and the Responsibility to Protect*, 20, 41 and Gareth Evans, *The Responsibility to Protect*, 56-61 for particular examples of this discussion.

<sup>274</sup> Gallagher, "A Clash of Responsibilities: Engaging with Realist Critiques of the R2P," 335.

reject their international responsibility to protect.”<sup>275</sup> It is this perceived ‘clash’ or incompatibility between national and collective interests that keeps R2P relegated to the sidelines of foreign policy, or at least until it can be utilized to further national interests. As Gallagher asserts, “For realists, complex and dangerous foreign policy agendas have the potential to undermine state security and should, therefore, only be pursued when matters of vital national interest are at stake.”<sup>276</sup> States, therefore, are unlikely to pursue ‘altruistic’ goals if they face any risk in doing so.

While human rights advocates might lament such a perspective, this pragmatism is not always ‘bad’ or immoral. In terms of R2P, such a view could lead to the more effective (and faithful) implementation of third pillar action under R2P. Realism’s skepticism regarding the plausibility of achieving human rights ends through military means can act as a necessary check on the blind undertaking of moralistic crusades which often bear unintended and detrimental consequences. While acknowledging that all scholars wish to live in a world free from mass atrocities, Gallagher asserts that the desire to eradicate these crimes should never be detached from political reality; basing foreign policy off of such aspirations alone will inevitable lead to ‘flawed and dangerous’ results.<sup>277</sup> The Libyan crisis is a case in point. Several billion (US) dollars and several thousand lives later, it is difficult to say that Libya is any more stable or human rights adherent than before the uprising.<sup>278</sup> A foreign policy guided by a faithful (and not

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<sup>275</sup> Ibid.

<sup>276</sup> Ibid., 338-9.

<sup>277</sup> Ibid., 337.

<sup>278</sup> Daadlader and Stavridis, “NATO’s Victory in Libya - The Right Way to Run an Intervention” and Ian Black, “Libyan revolution casualties lower than expected, says new government,” *The Guardian*, 8 January 2013, accessed 29 April 2013, <http://www.guardian.co.uk/world/2013/jan/08/libyan-revolution-casualties-lower-expected-government>.

convenient) adherence to realism could therefore act as a vital check against the use of force under R2P.

Gallagher's exploration of realism is not limited to the theory's arguments on humanitarian intervention. In exploring some of realism's principal arguments, Gallagher finds strong compatibility between the theory and R2P's first and second pillars. Gallagher points to Hobbes, one of the founding fathers of realism, and finds that his arguments on the sovereign reflect some of the primary assertions of the first pillar of R2P. Gallagher contends that:

In essence, the sovereign state provides the political order required to overcome the violence, fear, and misery that it is proposed form the routine of everyday life within the context of the state of nature. When one considers that the R2P sets out to protect populations from the mass violence, mass fear, and mass misery inherent in genocide, war crimes, crimes against humanity, and ethnic cleansing, one hopes that realists and R2P advocates can forge an agreement that the 'primary *raison d'être* and duty [of each individual state] is to protect its population' from such mass atrocity crimes.<sup>279</sup>

Hence, the realist state and the first pillar of R2P share the same foundational mandate: to protect populations from acts that make life 'nasty, brutish and short'.

Gallagher also asserts that the arguments that have led to realism's rejection of the second pillar of R2P do not take into account the realities of the modern world. According to Gallagher, the theory's rejection of the second pillar is based on realism's belief in the importance of relative power. Under realism's relative power rubric, the act of offering aid inherently decreases a state's relative standing while increasing that of the receiving state. Hence, "consumer states (those who seek assistance) increase their power base and therefore their chances of survival at the expense of provider states, which are weakened through their chances of failure."<sup>280</sup> This addition/subtraction equation, however, is overly simplistic and fails to acknowledge the

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<sup>279</sup> Ibid., 341.

<sup>280</sup> Ibid., 344.

collective benefit that states accrue from ensuring the stability and vitality of other states.

Gallagher provides a contemporary example of where the failure to uphold second pillar obligations directly led to national insecurity: “the US stands as the world’s greatest military power, yet remains increasingly plagued by the problem of Somalian piracy. This international threat emerged precisely because Somalia was allowed to collapse.”<sup>281</sup> This leads Gallagher to conclude that failing or troubled states increase the level of insecurity for *all* states, not just those experiencing instability, and hence should be the concern of the entire international community.<sup>282</sup>

While the above argument is situated within the context of R2P, this fundamental truth was recognized by liberal scholars as far back as Kant:

Since the community of the nations of the earth, in a narrower or broader way, has advanced so far that an injustice in one part of the world is felt in all parts, the idea of a cosmopolitical right is no phantastic and strained form of the conception of right, but necessary to complete the unwritten code, not only of the rights of states but of peoples as well, so as to make it coextensive with the rights of men in general, through the establishment of which perpetual peace will come.<sup>283</sup>

That this truth, articulated before the world wars, before Rwanda, before Kosovo and yet ignored by realism, attests to the need to rebalance not only the pillars of responsibility, but the theoretical pillars that guide international relations as well. The insights of liberalism and constructivism, while frequently paid lip service by world leaders, deserve serious development and implementation as well. No one theory can explain or account for all the complexities of the international system, a fact which underscores the need for a multi- and not mono-theoretical approach to foreign policy. Realism has much to contribute in the way of checking over-

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<sup>281</sup> Ibid., 346-7.

<sup>282</sup> Ibid., 346.

<sup>283</sup> Kant, “Eternal Peace,” *The Advocate of Peace* 59 no. 5 (1897): 116.



enthusiastic idealism and ensuring that foreign policy has realistically achievable objectives. But constructivism and liberalism also have much to add to the discussion. Wendt's insight into the institutional, and not inherent, nature of self-help and power politics should compel states to explore what features of international relations perpetuate these logics and how state-to-state interactions must change to address them.<sup>284</sup> The preponderance of collective action problems states face – from the environment to financial regulation to drug trafficking – underscores Keohane's call that, “global issues require systematic policy coordination and that such coordination require institutions.”<sup>285</sup> A liberal approach to foreign policy could lead states to look for avenues of cooperation and mutual gains, potentially decreasing the insecurity of the international system. Each pillar is necessary but insufficient on its own to understand and navigate global politics or effectively implement all three pillars of R2P.

Through his interrogation of realism, Gallagher methodologically shows that realism does not stand in contradiction to the goals of R2P. If utilized correctly, realism can enhance rather than undermine the principle and its implementation. R2P could benefit greatly from the pragmatic approach to foreign policy heralded by realism, and national security – a primary concern for realists – could be further guaranteed through each state's faithful execution of all R2P pillars of responsibility. The establishment of norms of cooperation, the realm of constructivism and liberalism, will require that these two theories are also utilized to develop a holistic approach to foreign policy and to R2P. Only when all three pillars, both theoretical and those of R2P, are balanced will the protection of populations from genocide, ethnic cleansing, war crimes, and crimes against humanity be realized.

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<sup>284</sup> Wendt, “Anarchy is What States Make of It,” 395.

<sup>285</sup> Keohane, “International Institutions: Can Interdependence Work?”, 84-5.

## 8. Conclusions

This paper set out to explore whether the three pillars of international relations theory – constructivism, liberalism, and realism – could be utilized to help elucidate and enhance one's understanding of the development and implementation of the 'Responsibility to Protect,' a recently adopted principle and emerging norm in global politics. In examining the central tenets and arguments of these three theories, it was found that a strong relationship exists between these theoretical 'pillars' and the three pillars of R2P. The aspirations and goals of each R2P pillar reflect the insights and influence that these three theories have had on the formation of foreign policy. The first pillar, concerned with developing a new norm of a 'responsibility to protect' and redefining what it means to be a sovereign, is supported by constructivism's arguments regarding the power ideas can have on the formation and reformation of state identity and interest. The second pillar, devoted to fostering cooperation between states to prevent the occurrence of mass atrocities, reflects liberal beliefs that institutions, economic interdependence, and democratic governance can reduce insecurity and lead to peace. The third pillar, which seeks to compel the international community to a 'timely and decisive' response in the face of mass atrocities, is enhanced and undermined by realism's insights into power and the challenges institutions face in overcoming self-interest and self-help in the security realm.

In developing these parallels, this paper found that the three 'parallel' pillars are in dire need of rebalancing if R2P is to fulfill its objective of protecting populations from genocide, ethnic cleansing, war crimes, and crimes against humanity. While realism's insights can help restrain policymakers from setting unrealistic and dangerous agendas, the dominance of realism in policymaking circles has thus far prevented the faithful implementation of all three pillars of

R2P. An examination of Darfur, Kenya, and Libya demonstrates the limitations of coercive action and underscore the need for states to take seriously their first and second pillar obligations. However, it is unlikely given realism's dominance in foreign policy that states will commit to developing effective first and second pillar policy while coercive force remains a viable tool in fulfilling R2P responsibilities. Hence, a reconsideration of coercive force's role in the realization of R2P is needed, a process which academics and policymakers alike have begun as evidenced through the conceptualization of a 'responsibility to peace' and 'Responsibility while Protecting'. This reconceptualization does not necessarily mean the rejection of realism; rather, it requires a reevaluation of its assumptions and assertions, one which academics like Gallagher have initiated and which show promise in mitigating the seeming incompatibilities between realism and the first and second pillars.

In examining these 'parallel pillars', this paper has found that the three international relations theories do indeed have much to say in relation to the principle of R2P. Whether their insights will be heeded is yet to be seen. What is certain, however, is that R2P could benefit greatly from a rebalancing of the theoretical and R2P pillars. Only by rebalancing these pillars can advocates and policymakers alike reduce the vulnerability of R2P to power considerations and potential abuse.

## Appendix: Defining the Mass Atrocity Crimes

This appendix serves as a quick reference regarding the four atrocity crimes stipulated by R2P. This section draws from international conventions, statutes, and academic sources to define these crimes. The relevant articles and sections have been reproduced below.

### A. Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide was approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) on 9 December 1948. The Convention entered into force on 12 January 1951. The full text of the Convention can be found in the United Nations Treaty Series, Vol. 78, p. 277. Genocide is hence defined as follows:

#### ARTICLE I

The Contracting Parties Confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

#### ARTICLE II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

#### ARTICLE III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

### B. Ethnic Cleansing

The term ‘ethnic cleansing’, derived from the Serbo-Croatian phrase *etničko ciscenje*, was originally employed to describe the events that occurred in the former Yugoslavia during the 1990s. Given the term’s lack of legal status, the Secretary-General concludes that “Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may

constitute one of the other three crimes.”<sup>286</sup> The term was nevertheless used in the “Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)”, a report which investigated the crimes perpetrated during the Yugoslav conflict.

For the purposes of this paper, the term ‘ethnic cleansing’ refers to “the attempt to create ethnically homogeneous geographic areas through the deportation or forcible displacement of persons belonging to particular ethnic groups,” an act which can involve “the removal of all physical vestiges of the targeted group through the destruction of monuments, cemeteries, and houses of worship.”<sup>287</sup>

### C. War Crimes

The Rome Statute of the International Criminal Court was adopted on 17 July 1998 and entered into force on 1 July 2002. Reflecting amendments to the Statute through 16 January 2002, the Statute defines ‘war crimes’ as follows:

#### ARTICLE VIII: War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
    - (i) willful killing;
    - (ii) Torture or inhuman treatment, including biological experiments;
    - (iii) Willfully causing great suffering, or serious injury to body or health;
    - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
    - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
    - (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
    - (vii) Unlawful deportation or transfer or unlawful confinement;
    - (viii) Taking of hostages.
  - (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

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<sup>286</sup> UN General Assembly, *Implementing the Responsibility to Protect*, para. 3.

<sup>287</sup> *Encyclopedia Britannica Online, Academic Edition*, s.v. “Ethnic Cleansing,” accessed 25 April 2013, <http://www.britannica.com/EBchecked/topic/194242/ethnic-cleansing>.

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;

- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
  - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
  - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
  - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
  - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (v) Pillaging a town or place, even when taken by assault;
  - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
  - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;
  - (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
  - (xiii) Employing poison or poisoned weapons;
  - (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;



- (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

#### **D. Crimes Against Humanity**

Crimes against humanity are also defined by the Rome Statute to the International Criminal Court. The relevant articles define these crimes as follows:

##### **ARTICLE VII: Crimes Against Humanity**

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

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